AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 79 Thursday,

No. 243 December 18, 2014

Pages 75417–75734

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 79, No. 243

Thursday, December 18, 2014

Agriculture Department
See Forest Service

Army Department
NOTICES
Privacy Act; Systems of Records, 75541–75543

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75555–75556

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Permanency Innovations Initiative Evaluation, 75556
Caring for Our Children Basics, 75557–75564

Coast Guard
RULES
Drawbridge Operations:
Red River, Alexandria, LA, 75430–75431
NOTICES
Guidance:
Maritime Cybersecurity Standards, 75574–75575

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Comptroller of the Currency
RULES
Subordinated Debt Issued by a National Bank, 75417–75423
PROPOSED RULES
Regulatory Capital Rules:
Revisions Applicable to Banking Organizations Subject to the Advanced Approaches Risk-Based Capital Rule, 75455–75473

Defense Department
See Army Department
RULES
Federal Acquisition Regulations:
Establishing a Minimum Wage for Contractors, 75434

Education Department
NOTICES
Applications for New Awards:
Student Support Services Program, 75722–75730

Employment and Training Administration
NOTICES
Availability of Funds and Funding Opportunities:
National Guard Youth ChalleNGe and Job ChalleNGe Program, 75593

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration

Environmental Protection Agency
RULES
Acquisition Regulations:
Clause for Work Assignments, 75434–75437
Air Quality State Implementation Plans; Approvals and Promulgations:
Indiana; Ozone and PM2.5 Standards, 75431–75433
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Indiana; Ozone and PM2.5 Standards, 75527–75528
National Emission Standards for Hazardous Air Pollutants:
Brick and Structural Clay Products Manufacturing; Clay Ceramics Manufacturing, 75622–75719
NOTICES
Meetings:
Chartered Science Advisory Board; Closed Teleconference, 75550–75551

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Special Conditions:
Sikorsky Aircraft Corporation Model S–76D Helicopter, Search and Rescue Automatic Flight Control System Installation, 75423–75428
PROPOSED RULES
Transport Airplane Fuel Tank and System Lightning Protection, 75496–75505
NOTICES
Petition for Exemption; Summaries, 75610–75611
Submission Deadline to Amend Slot Records for LaGuardia Airport, 75611–75612

Federal Communications Commission
RULES
Radio Broadcasting Services:
Various Locations, 75433–75434
PROPOSED RULES
Updating Competitive Bidding Rules, 75530
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75551–75553
Public Safety and Homeland Security Bureau; Comment Request, 75553

Federal Deposit Insurance Corporation
PROPOSED RULES
Regulatory Capital Rules:
Revisions Applicable to Banking Organizations Subject to the Advanced Approaches Risk-Based Capital Rule, 75455–75473
NOTICES
Meetings; Sunshine Act, 75553–75554

Federal Election Commission
PROPOSED RULES
Petitions for Rulemaking; Denials:
Federal Office, 75455

Federal Emergency Management Agency
NOTICES
Proposed Flood Hazard Determinations, 75575–75576
Proposed Flood Hazard Determinations; Corrections, 75576–75577

Federal Energy Regulatory Commission
NOTICES
Qualifying Conduit Hydropower Facilities:
Imperial Irrigation District, 75543–75544

Federal Highway Administration
NOTICES
Major Project Financial Plan Guidance, 75612–75617

Federal Maritime Commission
NOTICES
Agreements Filed, 75554

Federal Motor Carrier Safety Administration
RULES
Inspection, Repair, and Maintenance; Driver–Vehicle Inspection Report, 75437–75449

Federal Reserve System
PROPOSED RULES
Regulatory Capital Rules:
Revisions Applicable to Banking Organizations Subject to the Advanced Approaches Risk-Based Capital Rule, 75455–75473
Risk-Based Capital Guidelines:
Capital Requirements for Global Systemically Important Bank Holding Companies; Implementation, 75473–75496
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 75555

Fish and Wildlife Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Anderson Tract; Proposed Development of 60.7 Acres in Bexar County, TX, 75584–75585

Food and Drug Administration
PROPOSED RULES
Electronic Distribution of Prescribing Information for Human Prescription Drugs, Including Biological Products, 75506–75527
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Guidance for Industry—Fast Track Drug Development Programs—Designation, Development, and Application Review, 75564–75565
Draft Guidance for Industry and Staff:
Meetings with the Office of Orphan Products Development, 75566–75568
Guidance for Industry and Staff:
Cooperative Manufacturing Arrangements for Licensed Biologics, 75569–75570
Providing Regulatory Submissions in Electronic Format—Standardized Study Data, 75568–75569
Providing Regulatory Submissions in Electronic Format—Submissions under the Federal Food, Drug, and Cosmetic Act, 75570–75572

Foreign-Trade Zones Board
NOTICES
Proposed Production Activities:
Gildan Yarns, LLC; Charlotte, NC, 75532

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Jordan Cove Energy and Pacific Connector Gas Pipeline Projects, 75587–75589
Meetings:
Black Hills National Forest Advisory Board, 75531
National Urban and Community Forestry Advisory Council, 75531–75532

General Services Administration
RULES
Federal Acquisition Regulations:
Establishing a Minimum Wage for Contractors, 75434

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
The National Map Corps, 75585–75586

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
PROPOSED RULES
Findings of Insufficient Evidence:
World Trade Center Health Program; Petition 006—Primary Biliary Cirrhosis, 75528–75529

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
United States Extractive Industries Transparency Initiative Revenue, 75583–75584

International Trade Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Export Trade Certificate of Review, 75532–75533
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Freshwater Crawfish Tail Meat from the Peoples Republic of China, 75535–75536
Frozen Warmwater Shrimp from the Peoples Republic of China, 75533–75535

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Drill Pipe and Drill Collars from China, 75592–75593

Sugar from Mexico, 75591–75592

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Applications for Conveyances of Federally Owned Mineral Interests:
Dona Ana County, NM, 75586–75587
Environmental Impact Statements; Availability, etc.:
Jordan Cove Energy and Pacific Connector Gas Pipeline Projects, 75587–75589
Meetings:
San Juan Islands National Monument Advisory Committee, 75590
Requests for Nominations:
North Slope Science Initiative, Science Technical Advisory Panel, Alaska, 75590–75591

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulations:
Establishing a Minimum Wage for Contractors, 75434
NOTICES
Meetings:
Human Exploration and Operations Committee of the NASA Advisory Council, 75594–75595
Science Committee of the NASA Advisory Council, 75593–75594

National Institutes of Health
NOTICES
Meetings:
Advisory Committee to the Deputy Director for Intramural Research, 75573
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 75572–75573
National Center for Complementary and Alternative Medicine, 75572
Prospective Grants of Exclusive Licenses:
Multivalent Vaccines for Rabies Virus and Ebola and Marburg (Filoviruses), 75573–75574

National Oceanic and Atmospheric Administration
RULES
Fisheries Off West Coast States:
West Coast Salmon Fisheries; Amendment 18 to the Salmon Fishery Management Plan, 75449–75454
NOTICES
Recommendations of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud, 75536–75541

Nuclear Regulatory Commission
NOTICES
Charter Renewals:
Advisory Committee on Reactor Safeguards, 75595
Exemptions:
Duke Energy Florida, Inc., 75595–75597
Guidance:
Standard Review Plan for Conventional Uranium Mills and Heap Leach Facilities, 75597–75598
License Renewals:
Exelon Generation Co., LLC, LaSalle County Station, Units 1 and 2, 75598–75599

Presidential Documents
PROCLAMATIONS
Special Observances:
70th Anniversary of the Battle of the Bulge (Proc. 9221), 75731–75734

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Options Exchange, LLC, 75606–75608
C2 Options Exchange, Inc., 75602–75604
Chicago Board Options Exchange, Inc., 75599–75602
NYSE Arca, Inc., 75608–75609
NYSE MKT LLC, 75604–75606
Trading Suspension Orders:
Geo Finance Corp., 75609

State Department
NOTICES
Request for Reviewers of the World Ocean Assessment; Updates, 75609–75610

Susquehanna River Basin Commission
RULES
Review and Approval of Projects, 75428–75430

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration

Treasury Department
See Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75617–75618

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Advance Permission to Enter as Nonimmigrant; Revision, 75579
Certification of Military or Naval Service, 75578
Refugee/Asylee Relative Petition; Extension, 75577–75578
Changes to Application Procedures:
Cuban Family Reunification Parole Program, 75579–75581
Implementation of Haitian Family Reunification Parole Program, 75581–75583

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Disability Benefits Questionnaires, 75618–75619

Western Area Power Administration
NOTICES
Final Power Allocations:
Boulder Canyon Project, Post–2017 Resource Pool, 75544–75550

Separate Parts In This Issue

Part II
Environmental Protection Agency, 75622–75719

Part III
Education Department, 75722–75730

Part IV
Presidential Documents, 75731–75734

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

9221.....75733

11 CFR

Proposed Rules:

100.....75455

12 CFR

5.....75417

Proposed Rules:

3.....75455

217 (2 documents) 75455, 75473

324.....75455

14 CFR

29.....75423

Proposed Rules:

25.....75496

18 CFR

806.....75428

21 CFR

Proposed Rules:

201.....75506

606.....75506

610.....75506

33 CFR

117.....75430

40 CFR

52.....75431

Proposed Rules:

52.....75527

63.....75622

42 CFR

Proposed Rules:

88.....75528

47 CFR

73.....75433

Proposed Rules:

1.....75530

27.....75530

48 CFR

1.....75434

22.....75434

52.....75434

1511.....75434

1552.....75434

49 CFR

392.....75437

396.....75437

50 CFR

660.....75449

Rules and Regulations

Federal Register
Vol. 79, No. 243
Thursday, December 18, 2014

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

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket ID OCC–2014–0024]

RIN 1557–AD73

Subordinated Debt Issued by a National Bank

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule and request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its interim final rule making Basel III conforming amendments related to cross-references, subordinated debt and limits based on regulatory capital. The interim final rule, published in the **Federal Register** on February 28, 2014, revised and clarified the OCC's rules governing subordinated debt issued by national banks and Federal savings associations to make those rules consistent with the 2013 revised capital rules. The OCC is further clarifying the subordinated debt rules for national banks by moving certain provisions from national bank guidance to the rules and making other clarifying and technical amendments.

DATES: This interim final rule is effective January 1, 2015. Comments must be received by January 20, 2015.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Subordinated Debt Issued by a National Bank'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov*. Enter ''Docket ID OCC–2014–0024'' in the Search Box and click ''Search.'' Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2014–0024'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov*. Enter ''Docket ID OCC–2014–0024'' in the Search box and click ''Search.'' Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 649–5490; and Patricia D. Goings, Senior Licensing Analyst, or Patricia Roberts, Senior Licensing Analyst, Licensing Division, (202) 649–6260.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2013, the OCC published in the **Federal Register** the 2013 revised capital rules,[1] which listed, at 12 CFR 3.20(d), the criteria that an instrument must satisfy to be included in tier 2 capital. The mandatory compliance date for the 2013 revised capital rules is January 1, 2014, for advanced approaches national banks and Federal savings associations,[2] and

[1] *See* 78 FR 62018 (Oct. 11, 2013). Among other things, this rule adopted the Basel III Capital Framework and revised Prompt Corrective Action requirements for national banks and Federal savings associations.

[2] The Basel III Capital Framework, at 12 CFR 3.100(b)(1), defines an advanced approaches national bank or Federal savings association to mean a national bank or Federal savings association that:

1. Has consolidated total assets, as reported on its most recent year-end Consolidated Reports of Condition and Income (Call Report) equal to $250 billion or more;

2. Has consolidated total on-balance sheet foreign exposure on its most recent year-end Call Report equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

3. Is a subsidiary of a depository institution that uses the advanced approaches pursuant to subpart E of 12 CFR part 3 (OCC), 12 CFR part 217 (Board of Governors of the Federal Reserve System)

Continued

January 1, 2015, for non-advanced approaches national banks and Federal savings associations.

On February 28, 2014, the OCC published an interim final rule (February 2014 interim final rule) [3] amending the OCC's rules to be consistent with the 2013 revised capital rules. The February 2014 interim final rule revised and clarified the OCC's rules, at 12 CFR 5.47 and 163.81,[4] governing subordinated debt issued by national banks and Federal savings associations, respectively, to make the subordinated debt rules consistent with the Basel III criteria. In order to accommodate the different compliance dates for advanced approaches national banks and Federal savings associations and non-advanced approaches national banks and Federal savings associations, the February 2014 interim final rule created two sets of provisions: the first set of provisions that contained the pre-Basel III version of the subordinated debt rules (with minimal changes), and the second set of provisions that contained the new Basel III-conforming subordinated debt rules.

The second set of provisions incorporated substantive changes necessary to be consistent with the Basel III Capital Framework for subordinated debt. With respect to tier 2 capital instruments, those changes include: (i) Requiring *all* national banks and Federal savings associations to obtain prior OCC approval to prepay subordinated debt; (ii) prohibiting the holder of subordinated debt from having a contractual right to accelerate principal or interest on the instrument, except in the event of a receivership, insolvency, liquidation, or other similar proceeding; and (iii) prohibiting the exercise of a call option in the first five years following issuance, except in certain very limited circumstances.

As described in the preamble to the February 2014 interim final rule, this structure was intended to be temporary. The next section of this Supplementary Information describes in detail the changes the OCC is making in this interim final rule to further clarify the subordinated debt rules applicable to national banks under § 5.47.

Because of differences in the respective rules and guidance applicable to national banks and Federal savings associations, changes to 12 CFR 163.81 are not being made at this time. In the future, the OCC will consider integrating its rules regarding the issuance of subordinated debt for national banks and Federal savings associations.

II. Changes to § 5.47 Applicable to National Banks

A. Structural Changes

Beginning January 1, 2015, the first set of provisions at paragraphs (b) through (i) will no longer be necessary because they provide the old criteria and procedures for issuance and prepayment of subordinated debt that are not consistent with the Basel III Capital Framework. Accordingly, the OCC is deleting the first set of provisions and renumbering the second set of provisions. In addition, the OCC is making technical amendments throughout § 5.47 to remove all references to timing differences for advanced approaches national banks and non-advanced approaches national banks.

B. Requirements Applicable to Subordinated Debt

1. Guidelines for Subordinated Debt

Following publication of the February 2014 interim final rule, the OCC undertook a review of its guidance for subordinated debt issued by a national bank to make it consistent with the Basel III Capital Framework and the amendments to § 5.47. As a result of that review, the OCC has decided that most of the practices and disclosures described in Appendix A of the Subordinated Debt booklet of the Licensing Manual (current Guidelines) should be moved to § 5.47 to locate applicable requirements in one place. The changes to § 5.47 are described in Section II.B.2. of this Supplementary Information.

We note that, with a few exceptions described in Section II.B.2. of this Supplementary Information, the changes do not increase burden for institutions issuing subordinated debt. Typically, subordinated debt notes issued by national banks were consistent with the practices and disclosures described in the current Guidelines for a number of practical reasons, including making the review process quicker and more efficient and avoiding unnecessary burden and effort by the national bank by using sample language provided in the current Guidelines. The new requirements in this interim final rule are: (1) A new disclosure related to the OCC's authority under 12 CFR 3.11 to limit distributions, including interest payments on any tier 2 capital instrument if the national bank has full discretion to permanently or temporarily suspend such payments without triggering an event of default; and (2) an expanded prohibition on covenants or provisions that unreasonably restrict a national bank's ability to raise additional capital through the issuance of additional subordinated debt or other regulatory capital instruments.

Prior to the effective date of this interim final rule, the OCC plans to issue revised Guidelines for Subordinated Debt Issued by National Banks (revised Guidelines) and a revised sample note that are consistent with the 2013 revised capital rules and the amendments to § 5.47 made by the February 2014 interim final rule.

2. Description of Changes to § 5.47

The pre-Basel III rules were ambiguous regarding what, if any, requirements apply to subordinated debt that is not included in tier 2 capital. Accordingly, the February 2014 interim final rule clarified that certain basic requirements apply to all subordinated debt by adding the substantive requirements in § 3.701(f)(1) to the subordinated debt rule. The pre-Basel III rules generally did not require eligible national banks to obtain prior approval to prepay subordinated debt. However, the Basel III Capital Framework requires prior approval to prepay subordinated debt included in tier 2 capital. Therefore, the February 2014 interim final rule required that all national banks, not just eligible national banks, obtain prior approval to prepay such subordinated debt. In addition, the Basel III Capital Framework imposes additional requirements on a prepayment in the form of a call option, and the February 2014 interim final rule added those requirements to the subordinated debt rules.

The OCC is amending the name of paragraph (a) by deleting ''and applicability'' from the title of paragraph (a); adding additional statutory cites in paragraph (a)(1); and deleting paragraph (a)(2), which provides different compliance dates for an advanced approaches national bank and a non-advanced approaches national bank.

The OCC is redesignating current paragraph (j), ''Scope,'' as new paragraph (b). New paragraph (b) is amended to clarify that, in addition to setting forth procedures for the OCC's review and approval of subordinated

(Board), or 12 CFR part 325 (Federal Deposit Insurance Corporation) (FDIC) to calculate its total risk-weighted assets;

4. Is a subsidiary of a bank holding company or savings and loan holding company that uses the advanced approaches pursuant to 12 CFR part 217 to calculate its total risk-weighted assets; or

5. Elects to use subpart E of 12 CFR part 3 to calculate its total risk-weighted assets.

[3] *See* 79 FR 11300 (Feb. 28, 2014).

[4] The OCC recently proposed to move 12 CFR 163.81 to 12 CFR 5.56. See 79 FR 33260 (June 10, 2014).

debt, § 5.47 also sets forth requirements that are applicable to *all* subordinated debt issued by a national bank. The OCC believes this change more accurately reflects the content of § 5.47 and alerts a national bank that certain requirements apply to all subordinated debt, even if the national bank is not required to file an application to issue or prepay subordinated debt or a notice to include the subordinated debt in regulatory capital.

The OCC is redesignating current paragraph (k), ''Definitions,'' as new paragraph (c) and adding two new definitions. The new definitions are ''payment on subordinated debt'' and ''original maturity.'' The OCC is adding these definitions to clarify the meaning of those terms as they are used in § 5.47. ''Payment on subordinated debt'' is defined to mean principal and interest, and premium, if any, and ''original maturity'' is defined to mean the stated maturity of the subordinated debt note. While the definition of ''payment on subordinated debt'' is new, the substance of this definition reflects the prior understanding of payment as reflected in the language of the disclosures in the current Guidelines. The new definition of ''original maturity'' further clarifies that if a subordinated debt note does not have a stated maturity, the original maturity would be the earliest possible date the subordinated debt note may be redeemed, repurchased, prepaid, terminated, or otherwise retired by the national bank pursuant to the terms of such note. This definition of ''original maturity'' is consistent with existing OCC precedent.

The OCC is redesignating current paragraph (l) as new paragraph (d); renaming new paragraph (d) ''Requirements for issuance of subordinated debt''; adding a heading to new paragraph (d)(1), ''Minimum terms''; and redesignating current paragraph (l)(1)(viii) as new paragraph (d)(3)(iii). The OCC also is revising paragraph (d)(1); redesignating paragraph (d)(2) as new paragraph (e); and adding new paragraphs (d)(2) and (d)(3), as described in greater detail below.

In addition, in redesignated paragraph (d)(1)(iv) the OCC is clarifying the meaning of the term ''unsecured'' by providing that a subordinated debt note must not include the establishment of any legally enforceable fund for payment of the subordinated debt note through: (i) a sinking fund; or (ii) a compensating balance or other funds or assets subject to a legal right of offset, as defined by applicable state law. This concept of a sinking fund or compensating balance is being moved to paragraph (d)(1)(iv) from the current Guidelines. The OCC is concerned with any type of arrangement that acts, in economic substance, to create a secured arrangement between the note holder and the issuing national bank. The OCC has concluded that a sinking fund or similar arrangement that sets aside assets of a national bank constitutes a *de facto* secured arrangement or interest for the benefit of the subordinated note holder because, in the event of insolvency, the proceeds from the sale of the assets securing the loan would function like collateral and would be applied to the obligations of the holder of the subordinated debt note, which would place the note holder senior in right of payment to other creditors. Compensating balances, while rare, also have the potential to place the note holder in a *de facto* secured position. The concern is that, under state law, a correspondent bank may have a right of offset against the compensating balance for any amount due on the note. Therefore, the OCC is prohibiting such an arrangement with respect to the issuance of subordinated debt where a legally enforceable right of offset exists because it constitutes a secured arrangement for the benefit of the note holder.

The OCC is adding new paragraph (d)(2), ''Corporate authority.'' New paragraph (d)(2) prohibits the inclusion of any provision or covenant in a subordinated debt note that unduly restricts or otherwise limits the authority of a national bank or interferes with the OCC's supervision of the national bank. The OCC is moving five examples of provisions or covenants to new paragraph (d)(2) from the current Guidelines. Although these provisions are being added as new provisions to the regulations, as described in Section II.B.1. of this Supplementary Information, national banks currently comply with the substance of these provisions. New paragraph (d)(2)(i) prohibits a covenant or provision in which the national bank agrees to maintain a certain minimum amount in its capital accounts, or minimum assets, liquidity, loan ratios or other similar metrics. Pursuant to 12 U.S.C. 1818 and 3907, the OCC seeks to prohibit unsafe or unsound banking practices and promote maintenance of a national bank's capital, particularly when a national bank is experiencing financial difficulties. While a statement affirming the national bank's current condition would be acceptable, a covenant that would require a national bank to maintain on an ongoing basis a specified minimum amount in its capital accounts, or minimum capital assets, liquidity, loan ratios or other similar metrics, potentially would subject the national bank to acceleration at the very point in time when the national bank should seek to maintain its capital. The OCC believes this would constitute an unsafe or unsound banking practice and therefore is prohibiting such a covenant.

New paragraph (d)(2)(ii) prohibits a covenant or provision that unduly restricts a national bank's ability to raise additional capital through the issuance of additional subordinated debt or other regulatory capital instruments. The OCC believes that it would constitute an unsafe or unsound banking practice if a national bank agreed to such a covenant. The OCC notes that this provision mirrors similar restrictions in the 2013 revised capital rules for additional tier 1 capital and the wording in the current Guidelines has been expanded to cover the issuance of all regulatory capital instruments, including additional subordinated debt. An example of a prohibited covenant, which is provided in the current Guidelines, would be one that requires any subordinated debt issued by the national bank in the future to be junior in right of payment to the current issuance. The OCC believes this requirement reflects a fundamental supervisory policy that is equally applicable to all capital instruments, not just tier 1 instruments, and that the underlying concern that such a covenant in a subordinated debt note would unreasonably restrict a national bank's ability to raise capital in the future is equally applicable to subordinated debt.

New paragraph (d)(2)(iii) prohibits a covenant or provision that provides for default and acceleration of the subordinated debt as the result of a change in control, if such change in control results from the OCC's exercise of its statutory authority to require a national bank to sell stock in that national bank, enter into a merger or consolidation, or be acquired by a bank holding company. In a situation where a national bank is considered ''significantly undercapitalized'' as defined under applicable law, or in certain circumstances where it is considered ''undercapitalized,'' the OCC has broad statutory authority to require a national bank to sell stock in the national bank, enter into a merger or consolidation, or be acquired by a bank holding company. In such a case, the OCC does not allow a change in control resulting from such OCC action to constitute a default. Therefore, the OCC is adding this prohibition. The OCC believes that, in practice, such a clause

is unnecessary because when the OCC directs the merger or acquisition of the national bank, the OCC requires the purchaser of a national bank to assume the obligation on the subordinated debt note, which provides adequate protection to the note holder.

New paragraph (d)(2)(iv) prohibits a covenant or provision that requires the prior approval of a purchaser or holder of the subordinated debt note in the case of a voluntary merger by a national bank where the resulting institution assumes the due and punctual performance of all conditions of the subordinated debt note and agreement and is not in default of the various covenants of the subordinated debt. The OCC is moving this provision from the current Guidelines to paragraph (d)(2)(iv) with one simplifying change; the rule does not require the resulting institution to be a commercial bank. The OCC believes that the amended language sufficiently protects the note holder by permitting a default clause if a voluntary merger does not satisfy these conditions, while at the same time not interfering with a national bank's ability to exercise its business judgment and manage the national bank in a manner that avoids unsafe or unsound banking practices.

Paragraph (d)(2)(v) prohibits a covenant or provision that provides for default and acceleration of the subordinated debt as the result of a default by a subsidiary of the national bank (including a limited liability company), unless there is a separate agreement between the subsidiary and the purchaser of the national bank's subordinated debt note; and such separate agreement has been reviewed and approved by the OCC. While the OCC acknowledges that in some instances default by a subsidiary may signal financial difficulties of the parent national bank, the OCC believes it would be an unsafe or unsound banking practice if a technical or otherwise minor default by a subsidiary of the national bank could trigger the default of a national bank's subordinated debt note resulting in acceleration. Therefore, the rule allows such a default to occur only if there is a separate agreement between the subsidiary and the purchaser and the separate agreement has been reviewed and approved by the OCC.

The OCC is adding new paragraph (d)(3), ''Disclosure requirements.'' New paragraph (d)(3)(i) provides two disclosures that the OCC has determined are sufficiently important to require that they must appear clearly on the face of a subordinated debt note in all capital letters using the exact language in paragraph (d)(3)(i). These disclosures, which are being moved to new paragraph (d)(3)(i) from the current Guidelines, state that the obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation (FDIC), and that the obligation is subordinated to claims of depositors and general creditors, is unsecured, and is ineligible as collateral for a loan by the issuing national bank.

New paragraph (d)(3)(ii) lists three types of disclosures that a national bank is required to make in the subordinated debt note. The OCC has determined that these disclosures contain important information that must be disclosed to a potential purchaser of the subordinated debt note. However, rather than providing specific language for these disclosures, paragraph (d)(3)(ii) allows national banks discretion in how they word the disclosures, provided the disclosures are made clearly and accurately. Two of these disclosures are being moved to paragraph (d)(3)(ii) from the current Guidelines, and the third one is a new disclosure.

The first such disclosure, at paragraph (d)(3)(ii)(A), relates to the order and level of subordination. In addition to being subordinated to the claims of depositors, this disclosure provides that, at a minimum, the subordinated debt note is subordinate and junior in its right of payment to the obligations of all creditors, including both secured and unsecured or general creditors, except those specifically designated as ranking on a parity with, or subordinated to, the subordinated debt note. The second disclosure, at paragraph (d)(3)(ii)(B), is a general description of the OCC's regulatory authority with respect to a national bank in danger of insolvency that includes: (1) in the case of insolvency, that the FDIC, acting as receiver, has authority to transfer a national bank's obligation under the subordinated debt note and to supersede or void any default, acceleration, or subordination that may have occurred; (2) in the case of a national bank that is ''undercapitalized'' as defined by applicable law and fails to satisfactorily implement a required capital restoration plan, that the national bank may be subject to the additional restrictions and requirements applicable to a ''significantly undercapitalized'' institution, including being required to sell shares in the national bank, being acquired by a depository institution holding company, or being merged or consolidated with another depository institution, and this authority supersedes and voids any defaults that may have occurred; and (3) in the case of a national bank that is ''critically undercapitalized,'' as defined by applicable law, that the national bank is prohibited from making principal or interest payments on the subordinated debt note without prior regulatory approval.

The third such disclosure, at paragraph (d)(3)(ii)(C), is a new disclosure that is not in the current Guidelines. It describes the OCC's authority under 12 CFR 3.11 to limit distributions, including interest payments on any tier 2 capital instrument if the national bank has full discretion to permanently or temporarily suspend such payments without triggering an event of default. The OCC believes that this disclosure is necessary to make clear to subordinated debt note holders the circumstances in which certain payments or other distributions related to the subordinated debt note could be limited and is particularly important in light of the potential new limitations under the Basel III Capital Framework.

Current paragraph (l)(1)(viii) requires that subordinated debt must comply with the Securities Offering Disclosure Rules in 12 CFR part 16, and the OCC is retaining that requirement as redesignated paragraph (d)(3)(iii). The rules in Part 16 establish registration statement and prospectus requirements for the offer or sale of securities issued by a national bank, subject to exemptions.

The OCC notes that national banks also must comply with all applicable laws and regulations, such as the federal and state securities laws.

The OCC is redesignating current paragraph (l)(2), ''Additional requirements to qualify as tier 2 capital,'' as new paragraph (e). In addition, the OCC is adding a reminder that 12 CFR 3.20(d)(1)(xi) requires an advanced approaches national bank to make a specific disclosure that holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the national bank enters into a receivership, insolvency, liquidation, or similar proceeding. The OCC also is deleting the requirement relating to applicable OCC guidance for subordinated debt, which will no longer be necessary because those practices and disclosures deemed to be most important by the OCC are being added to § 5.47.

The OCC is redesignating current paragraph (m) as new paragraph (f) and renaming new paragraph (f) ''Process and procedures.'' The OCC also is redesignating current paragraphs (n), (o), and (p) as new paragraphs (g), (h), and (i).

III. Request for Comments

The OCC requests comment on all aspects of this interim final rule.

IV. Regulatory Analysis

A. Administrative Procedure Act

Pursuant to the Administrative Procedure Act (APA),[5] at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The OCC finds that it is impracticable to seek prior notice and comment for the following reasons. Subordinated debt plays an important role in the capital and liquidity management of national banks. The February 2014 interim final rule revised and clarified the OCC's rules governing subordinated debt issued by national banks to make those rules consistent with the 2013 revised capital rules. This interim final rule makes important clarifications to those subordinated debt rules by moving certain provisions from the current Guidelines to the rules and making other clarifying and technical amendments. This interim final rule is necessary because the 2013 revised capital rules will become applicable to non-advanced approaches national banks beginning January 1, 2015. Accordingly, the OCC finds good cause to issue this interim final rule.

The APA also requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the agency determines for good cause that the rule should become effective before such time. For the reasons described above, the OCC finds good cause to dispense with the delayed effective date otherwise required.[6]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[7] generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. The RFA does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[8] For the reasons described above, the OCC has determined, for good cause, that it is unnecessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in 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, as adjusted for inflation, in any one year. The Unfunded Mandates Reform Act only applies when an agency issues a general notice of proposed rulemaking. Because the OCC is not publishing a notice of proposed rulemaking, this final rule is not subject to section 202 of the Unfunded Mandates Reform Act.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The majority of the information collection requirements contained in this interim final rule have previously been approved under OMB Control Nos. 1557–0014 and 1557–0320. The amendments published today do not modify the approved collections but add a disclosure requirement that needs OMB approval. Section 5.47(d)(3)(ii)(C) requires in the subordinated debt note, a description of the OCC's authority under 12 CFR 3.11 to limit distributions, including interest payments on any tier 2 capital instrument if the national bank has full discretion to permanently or temporarily suspend such payments without triggering an event of default. The OCC has submitted its collection under OMB Control No. 1557–0320 to OMB for revision to seek approval for this requirement.

Estimated Number of Respondents: 42.

Estimated Number of Responses per Respondent: 1.

Estimated Burden Hours per Response: 0.50 hours.

Total Estimated Burden: 21 hours.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR Chapter I, part 5, as set forth below.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

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

Authority: 12 U.S.C. 1 *et seq.,* 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

■ 2. Revise § 5.47 to read as follows:

§ 5.47 Subordinated debt issued by a national bank.

(a) *Authority.* 12 U.S.C. 93a, 1831o, and 3907.

(b) *Scope.* This section sets forth the requirements applicable to all subordinated debt notes issued by national banks and the procedures for OCC review and approval of a national bank's application to issue or prepay subordinated debt and a notice to include subordinated debt in tier 2 capital.

(c) *Definitions.* The following definitions apply to this section:

Capital plan means a plan describing the means and schedule by which a national bank will attain specified capital levels or ratios, including a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

Original maturity means the stated maturity of the subordinated debt note. If the subordinated debt note does not have a stated maturity, then original maturity means the earliest possible date the subordinated debt note may be redeemed, repurchased, prepaid, terminated, or otherwise retired by the national bank pursuant to the terms of the subordinated debt note.

Payment on subordinated debt means principal and interest, and premium, if any.

[5] *See* 5 U.S.C. 553(b) and (d).

[6] *See id.* at 553(d).

[7] *See id.* at 601 *et seq.*

[8] *See id.* at 603 and 604.

Tier 2 capital has the same meaning as set forth in 12 CFR 3.20(d).

(d) *Requirements for issuance of subordinated debt.* A national bank issuing subordinated debt must satisfy the requirements of this paragraph (d).

(1) *Minimum terms.* The terms of any subordinated debt note issued by a national bank must:

(i) Have a minimum original maturity of at least five years;

(ii) Not be a deposit and not insured by the Federal Deposit Insurance Corporation (FDIC);

(iii) Be subordinated to the claims of depositors;

(iv) Be unsecured, which would include prohibiting the establishment of any legally enforceable fund earmarked for payment of the subordinated debt note through:

(A) A sinking fund; or

(B) A compensating balance or any other funds or assets subject to a legal right of offset, as defined by applicable state law;

(v) Be ineligible as collateral for a loan by the issuing national bank;

(vi) Provide that once any scheduled payments of principal begin, all scheduled payments shall be made at least annually and the amount repaid in each year shall be no less than in the prior year; and

(vii) Provide that, where applicable, no payment (including payment pursuant to an acceleration clause, redemption prior to maturity, repurchase, or exercising a call option) shall be made without prior OCC approval.

(2) *Corporate authority.* A subordinated debt note must not include any provision or covenant that unduly restricts or otherwise acts to unduly limit the authority of a national bank or interferes with the OCC's supervision of the national bank. Specifically, this would include a provision or covenant that:

(i) Maintains a certain minimum amount in its capital accounts or other metric, such as minimum capital assets, liquidity, or loan ratios;

(ii) Unreasonably restricts a national bank's ability to raise additional capital through the issuance of additional subordinated debt or other regulatory capital instruments;

(iii) Provides for default and acceleration of the subordinated debt as the result of a change in control, if such change in control results from the OCC's exercise of its statutory authority to require a national bank to sell stock in that national bank, enter into a merger or consolidation, or be acquired by a bank holding company;

(iv) Requires the prior approval of a purchaser or holder of the subordinated debt note in the case of a voluntary merger by a national bank where the resulting institution:

(A) Assumes the due and punctual performance of all conditions of the subordinated debt note and agreement; and

(B) Is not in default of the various covenants of the subordinated debt; and

(v) Provides for default and acceleration of the subordinated debt as the result of a default by a subsidiary (including a limited liability company) of the national bank, unless:

(A) There is a separate agreement between the subsidiary and the purchaser of the national bank's subordinated debt note; and

(B) Such agreement has been reviewed and approved by the OCC.

(3) *Disclosure requirements.* (i) A national bank must disclose clearly on the face of any subordinated debt note the following language in all capital letters:

(A) THIS OBLIGATION IS NOT A DEPOSIT AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION; and

(B) THIS OBLIGATION IS SUBORDINATED TO CLAIMS OF DEPOSITORS AND GENERAL CREDITORS, IS UNSECURED, AND IS INELIGIBLE AS COLLATERAL FOR A LOAN BY [INSERT NAME OF ISSUING NATIONAL BANK].

(ii) A national bank must disclose clearly and accurately in the subordinated debt note:

(A) The order and level of subordination, and in addition to being subordinated to the claims of depositors, provide that, at a minimum, the subordinated debt note is subordinate and junior in its right of payment to the obligations of all creditors, including both secured and unsecured or general creditors, except those specifically designated as ranking on a parity with, or subordinated to, the subordinated debt note;

(B) A general description of the OCC's regulatory authority with respect to a national bank in danger of insolvency that includes:

(*1*) With respect to insolvency, that the FDIC, acting as receiver, has authority to transfer a national bank's obligation under the subordinated debt note and to supersede or void any default, acceleration, or subordination that may have occurred;

(*2*) If a national bank that is ''undercapitalized'' as defined by applicable law fails to satisfactorily implement a required capital restoration plan, the national bank may be subject to all the additional restrictions and requirements applicable to a ''significantly undercapitalized'' institution, as defined by applicable law, including being required to sell shares in the national bank, being acquired by a depository institution holding company, or being merged or consolidated with another depository institution, and this authority supersedes and voids any defaults that may have occurred; and

(*3*) If a national bank is ''critically undercapitalized,'' as defined by applicable law, the national bank is prohibited from making principal or interest payments on the subordinated debt note without prior regulatory approval; and

(C) A description of the OCC's authority under 12 CFR 3.11 to limit distributions, including interest payments on any tier 2 capital instrument if the national bank has full discretion to permanently or temporarily suspend such payments without triggering an event of default.

(iii) A national bank must comply with the Securities Offering Disclosure Rules in 12 CFR part 16.

(e) *Additional requirements to qualify as tier 2 capital.* In order to qualify as tier 2 capital, a national bank's subordinated debt must meet the requirements in 12 CFR 3.20(d), including, for an advanced approaches national bank, the disclosure requirement in 12 CFR 3.20(d)(1)(xi).

(f) *Process and procedures*—(1) *Issuance of subordinated debt*—(i) *Approval*—(A) *Eligible bank.* An eligible bank is required to receive prior approval from the OCC to issue any subordinated debt, in accordance with paragraph (g)(1)(i) of this section, if:

(*1*) The national bank will not continue to be an eligible bank after the transaction;

(*2*) The OCC has previously notified the national bank that prior approval is required; or

(*3*) Prior approval is required by law.

(B) *National bank not an eligible bank.* A national bank that is not an eligible bank must receive prior OCC approval to issue any subordinated debt, in accordance with paragraph (g)(1)(i) of this section.

(ii) *Notice to include subordinated debt in tier 2 capital.* All national banks must notify the OCC, in accordance with paragraph (h) of this section, within ten days after issuing subordinated debt that is to be counted as tier 2 capital. Where a national bank's application to issue subordinated debt has been deemed to be approved, in accordance with paragraph (g)(2)(i) of this section, the national bank must notify the OCC, pursuant to paragraph (h) of this section, after issuance of the

subordinated debt. A national bank may not include subordinated debt as tier 2 capital unless the national bank has filed the notice with the OCC and received notification from the OCC that the subordinated debt issued by the national bank qualifies as tier 2 capital.

(2) *Prepayment of subordinated debt*—(i) *Subordinated debt not included in tier 2 capital*—(A) *Eligible bank.* An eligible bank is required to receive prior approval from the OCC to prepay any subordinated debt that is not included in tier 2 capital (including acceleration, repurchase, redemption prior to maturity, and exercising a call option), in accordance with paragraph (g)(1)(ii) of this section, only if:

(*1*) The national bank will not be an eligible bank after the transaction;

(*2*) The OCC has previously notified the national bank that prior approval is required;

(*3*) Prior approval is required by law; or

(*4*) The amount of the proposed prepayment is equal to or greater than one percent of the national bank's total capital, as defined in 12 CFR 3.2.

(B) *National bank not an eligible bank.* A national bank that is not an eligible bank must receive prior OCC approval to prepay any subordinated debt that is not included in tier 2 capital (including acceleration, repurchase, redemption prior to maturity, and exercising a call option), in accordance with paragraph (g)(1)(ii) of this section.

(ii) *Subordinated debt included in tier 2 capital*—(A) *General.* Notwithstanding paragraph (f)(2)(i)(B) of this section, all national banks must receive prior OCC approval to prepay subordinated debt included in tier 2 capital, in accordance with paragraph (g)(1)(ii)(A) of this section.

(B) *Call option.* Notwithstanding this paragraph (f)(2)(ii)(A) of this section, a national bank must receive prior OCC approval to prepay subordinated debt included in tier 2 capital, in accordance with paragraph (g)(2)(ii)(B) of this section, when the prepayment is a result of exercising a call option.

(g) *Prior approval procedure*—(1) *Application*—(i) *Issuance of subordinated debt.* A national bank required to obtain OCC approval before issuing subordinated debt shall submit an application to the appropriate OCC licensing office. The application must include:

(A) A description of the terms and amount of the proposed issuance;

(B) A statement of whether the national bank is subject to a capital plan or required to file a capital plan with the OCC and, if so, how the proposed change conforms to the capital plan;

(C) A copy of the proposed subordinated note format and note agreement; and

(D) A statement that the subordinated debt issue complies with all applicable laws and regulations.

(ii) *Prepayment of subordinated debt*—(A) *General.* A national bank required to obtain OCC approval before prepaying subordinated debt, pursuant to paragraph (f)(2) of this section, shall submit an application to the appropriate OCC licensing office. The application must include:

(*1*) A description of the terms and amount of the proposed prepayment;

(*2*) A statement of whether the national bank is subject to a capital plan or required to file a capital plan with the OCC and, if so, how the proposed change conforms to the capital plan; and

(*3*) A copy of the subordinated debt instrument the national bank is proposing to prepay.

(B) *Call option.* (*1*) Before prepaying subordinated debt if the prepayment is in the form of a call option, a national bank is required to obtain OCC approval, pursuant to paragraph (g)(2)(ii) of this section, by submitting an application to the appropriate OCC licensing office.

(*2*) In addition to the information required in this paragraph (g)(1)(ii)(A) of this section, the application must include:

(*i*) A statement explaining why the national bank believes that following the proposed prepayment the national bank would continue to hold an amount of capital commensurate with its risk; or

(*ii*) A description of the replacement capital instrument that meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20, including the amount of such instrument, and the time frame for issuance.

(iii) *Additional information.* The OCC reserves the right to request additional relevant information, as appropriate.

(2) *Approval*—(i) *General.* The application is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank prior to that date that the filing presents a significant supervisory, or compliance concern, or raises a significant legal or policy issue.

(ii) *Call option.* Notwithstanding this paragraph (g)(2)(i) of this section, if the application for prior approval is for prepayment in the form of a call option, the national bank must receive affirmative approval from the OCC to exercise the call option. If the OCC requires the national bank to replace the subordinated debt, the national bank must receive affirmative approval that the replacement capital instrument meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20 and must issue the replacement instrument prior to exercising the call option, or immediately thereafter.[2]

(iii) *Tier 2 capital.* Following notification to the OCC pursuant to paragraph (f)(1)(ii) of this section that the national bank has issued the subordinated debt, the OCC will notify the national bank whether the subordinated debt qualifies as tier 2 capital.

(iv) *Expiration of approval.* Approval expires if a national bank does not complete the sale of the subordinated debt within one year of approval.

(h) *Notice procedure for inclusion in tier 2 capital.* (1) All national banks shall notify the appropriate OCC licensing office in writing within ten days after issuing subordinated debt that it intends to include as tier 2 capital. A national bank may not include such subordinated debt in tier 2 capital unless the national bank has received notification from the OCC that the subordinated debt qualifies as tier 2 capital.

(2) The notice must include:

(i) The terms of the issuance;

(ii) The amount and date of receipt of funds;

(iii) A copy of the final subordinated note format and note agreement; and

(iv) A statement that the issuance complies with all applicable laws and regulations.

(i) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to transactions governed by this section.

Dated: December 10, 2014.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2014–29615 Filed 12–17–14; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No.FAA–2011–1026; Special Conditions No. 29–036–SC]

Special Conditions: Sikorsky Aircraft Corporation (Sikorsky) Model S–76D Helicopter, Search and Rescue (SAR) Automatic Flight Control System (AFCS) Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

[2] A national bank may replace tier 2 capital instruments concurrent with the redemption of existing tier 2 capital instruments.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Sikorsky Model S–76D helicopter. This model of helicopter, as modified by Sikorsky, will have novel or unusual design features associated with installing an optional SAR AFCS. The applicable airworthiness standards do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to show a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Sikorsky Aircraft Corporation Model S–76D on December 9, 2014.

We must receive your comments by February 17, 2015.

ADDRESSES: Send comments identified by docket number FAA–2014–1026 using any of the following methods:

- *Federal eRegulations 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 of Courier:* Deliver comments to the ''Mail'' address 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://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 docket, 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: You can read the background documents or comments received at *http://www.regulations.gov*. Follow the online instructions for accessing the docket or go to the Docket Operations in Room @12–140 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: Mitchell Soth, FAA, Rotorcraft Directorate, Regulations and Policy Group, ASW–111, Rotorcraft Directorate, Aircraft Certification Service, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5104; email *mitch.soth@faa.gov*.

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The substance of these special conditions has been subjected to the notice and comment period previously and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Further, a delay in the effective date of these special conditions would significantly delay issuance of the design approval and thus delivery of the helicopter, which is imminent. Therefore, the FAA has determined that prior public notice and comment are unnecessary, impracticable, and contrary to the public interest, and finds good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring additional expense or delay. We may change these special conditions based on the comments we receive.

Background and Discussion

On January 13, 2014, Sikorsky Aircraft Corporation applied for a change to Type Certificate (TC) No. H1NE to install an optional SAR AFCS in the Model S–76D helicopter. The S–76D is a transport category helicopter certificated to Category A and Category B requirements, and instrument flight certificated under the requirements of Appendix B to 14 CFR part 29, Amendment 29–52.

There is a need to use dedicated AFCS upper modes, in which a fully coupled autopilot provides operational SAR profiles, for SAR operations conducted over water in offshore areas clear of obstructions. The SAR modes enable the helicopter pilot to fly fully coupled maneuvers, to include predefined search patterns during cruise flight, and to transition from cruise flight to a stabilized hover and departure (transition from hover to cruise flight). The SAR AFCS also includes an auxiliary crew control that allows another crewmember (such as a hoist operator) to have limited authority to control the helicopter's longitudinal and lateral position during hover operations.

Flight operations conducted over water at night may have an extremely limited visual horizon with little visual reference to the surface even when conducted under Visual Meteorological Conditions. Consequently, the certification requirements for SAR modes are considered equivalent to operating under Instrument Meteorological Conditions, and therefore must meet the criteria in Appendix B to 14 CFR part 29. While this Appendix prescribes airworthiness criteria for instrument flight, it does not consider operations below instrument flight minimum speed (V_{MINI}), whereas the SAR modes allow for coupled operations at low speed, all-azimuth flight to zero airspeed (hover).

Since SAR operations have traditionally been a public use mission, the use of SAR modes in civil operations requires special airworthiness standards (special conditions) to maintain a level of safety consistent with Category B and Instrument Flight Rule (IFR) certification. In this regard, 14 CFR part 29 lacks adequate airworthiness standards for AFCS SAR mode certification to include flight characteristics, performance, and installed equipment and systems. These special conditions do not require guaranteed departure from a hover following an engine failure. Therefore, designs that apply these special conditions are prohibited from conducting external load operations requiring one engine inoperative hover capability. In addition, these special conditions do not address the 14 CFR 29.865 requirements for the carriage of human external cargo.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Sikorsky must show that the S–76D model helicopter, as changed, continues to meet either the applicable provisions of the regulations incorporated by reference in TC No.

H1NE or the applicable regulations in effect on the date of application for the change, depending on the significance of the change as defined by 14 CFR 21.101. The regulations incorporated by reference in the TC are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in H1NE are as follows:

(a) 14 CFR 29.391, 29.561(b)(c), 29.625, 29.671, 29.785, 29.967, 29.973 at amendment 29–0.

(b) 14 CFR 29.927 at 29–3.

(c) 14 CFR 29.307 at amendment 29–4 (all but main rotor and tail blades).

(d) 14 CFR 29.787, 29.865 at amendment 29–12 (does not meet the 29–43 requirements for Human External Cargo).

(e) 14 CFR 29.908 at amendment 29–13.

(f) 14 CFR 29.1309 at amendment 29–14 (all but new avionics, AFCS, and Electrical Power Generation and Distribution System).

(g) 14 CFR 29.571 at amendment 29–20 (all but main and tail rotor blades only).

(h) 14 CFR 29.1 at amendment 29–21.

(i) 14 CFR 29.923(c)–(o), 29.963, 29.975 at amendment 29–26.

(j) 14 CFR 29.561(c) at amendment 29–29 (for engine installation only).

(k) 14 CFR 29.923(a)(b1)(b3) at amendment 29–34.

(l) 14 CFR part 29 through Amendment 29–52 as follows: 29.2, 29.21, 29.25, 29.27, 29.29, 29.31, 29.33, 29.45, 29.49, 29.51, 29.53, 29.55, 29.59, 29.60, 29.61, 29.62, 29.63, 29.64, 29.65, 29.67, 29.71, 29.73, 29.75, 29.77, 29.79, 29.81, 29.83, 29.85, 29.87, 29.141, 29.143, 29.151, 29.161, 29.171, 29.173, 29.175, 29.177, 29.181, 29.231, 29.235, 29.239, 29.241, 29.251, 29.301, 29.303, 29.305, 29.307 (main and tail rotor blades only), 29.309, 29.321, 29.337, 29.339, 29.341, 29.351, 29.361, 29.395, 29.397, 29.399, 29.401, 29.403, 49.411, 29.413, 29.471, 29.473, 29.475, 29.477, 29.479, 29.481, 29.483, 29.485, 29.493, 29.547, 29.549, 29.551, 29.561(a)(d), 29.563, 29.571 (main and tail rotor blades only), 29.601, 29.602, 29.603, 29.605, 29.607, 29.609, 29.610, 29.611, 29.613, 29.619, 29.621, 29.623, 29.629, 29.653, 29.659, 29.661, 29.663, 29.672, 29.673, 29.674, 29.675, 29.681, 29.683, 29.685, 29.687, 29.691, 29.695, 29.723, 29.725, 29.727, 29.729, 29.731, 29.733, 29.735, 29.771, 29.773, 29.775, 29.777, 29.779, 29.783, 29.801, 29.803, 29.805, 29.807, 29.809, 29.811, 29.812(a)(c)(d)(e)(f), 29.813(c)(2), 29.831, 29.851, 29.853, 29.855, 29.861, 29.863, 29.871, 29.873, 29.877, 29.901, 29.903, 29.907, 29.917, 29.921, 29.931, 29.939, 29.951, 29.953, 29.954, 29.955, 29.959, 29.961, 29.965, 29.969, 29.971, 29.977, 29.993, 29.995, 29.997, 29.999, 29.1011, 29.1013, 29.1015, 29.1017, 29.1019, 29.1021, 29.1023, 29.1027, 29.1041, 29.1043, 29.1045, 29.1047, 29.1049, 29.1091, 29.1093, 29.1103, 29.1121, 29.1123, 29.1141, 29.1143, 29.1145, 29.1151, 29.1163, 29.1165, 29.1181, 29.1183, 29.1185, 29.1187, 29.1189, 29.1191, 29.1193, 29.1194, 29.1195, 29.1197, 29.1199, 29.1201, 29.1203, 29.1301, 19.1303, 29.1305, 29.1307, 29.1309 (new avionics, AFCS, and Electrical Power Generation and Distribution System only), 29.1317, 29.1321, 29.1322, 29.1323, 29.1325, 29.1327, 29.1329, 29.1331, 29.1333, 29.1335, 29.1337, 29.1351, 29.1353, 29.1355, 29.1357, 29.1359, 29.1363, 29.1381, 29.1383, 29.1385, 29.1387, 29.1389, 29.1391, 29.1393, 29.1395, 29.1397, 29.1401. 29.1411, 29.1413, 29.1415, 29.1431, 29.1435, 29.1457, 29.1459, 29.1461, 29.1501, 29.1503, 29.1505, 29.1509, 29.1517, 29.1519, 29.1521, 29.1523, 29.1525, 29.1527, 29.1529, 29.1541, 29.1543, 29.1545, 29.1547, 29.1549, 29.1551, 29.1553, 29.1555, 29.1557, 29.1559, 29.1561, 29.1565, 29.1581, 29.1583, 29.1585, 29.1587, 29.1589, A29.1, A29.2, A29.3, A29.4, B29.1, B29.2, B29.3, B29.4, B29.5, B29.6, B29.7, B29.8, B29.9, C29.1, E29.1.

(m) 14 CFR part 29 Not Adopted: 29.427, 29.497, 29.501, 29.505, 59.511, 29.519, 29.521, 29.562, 29.631, 29.679, 29.737, 29.751, 29.753, 29.755, 29.757, 29.812(b), 29.815, 29.833, 29.859, 29.935, 29.952, 29.957, 29.979, 29.991, 29.1001, 29.1025, 29.1101, 29.1105, 29.1107, 29.1109, 29.1125, 29.1142, 29.1147, 29.1157, 29.1159, 29.1399, 29.1419, 29.1433, 29.1439, 29.1522, D29.1.

(m) 14 CFR part 36 through Amendment 36–28 as follows: 36.801, 36.803, 36.805, H36.1–H36.305.

(n) Special Conditions No. 29–004–SC (Docket No. SW004), dated June 17, 1998.

(o) Equivalent Level of Safety Findings:

(1) Number TD1509BO–R–S–1 for 14 CFR 29.1401(d) at amendment 29–11; Anticollision light system installed in accordance with Sikorsky Drawing 33776–92603.

(2) Number AT01847BO–R–P–1 for 14 CFR 29.1305 at amendment 29–40 and 14 CFR 29.1549 at amendment 29–34; Use of a Power Limit Indicator (PLI) as the primary means for indicating/setting power.

(p) Ditching: If emergency floatation gear, P/N 33776–92709, is installed, then compliance has also been shown to Amendment 29–52 of 29.563, 29.801(b), (c), (d) and (e) and 29.807(b) and (d). For overwater operations, compliance with the operating rules and 29.1411, 29.1415, and 26.1561 must be shown.

Regulatory Basis for Special Conditions

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 29) do not contain adequate or appropriate safety standards for the Sikorsky Model S–76D because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the TC for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same TC be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Sikorsky Model S–76D will incorporate the following novel or unusual design features.

The SAR system is composed of a navigation computer with SAR modes, an AFCS that provides coupled SAR functions, hoist operator control, a hover speed reference system, and two radio altimeters. The AFSC coupled SAR functions include:

(a) Hover hold at selected height above the surface.

(b) Ground speed hold.

(c) Transition down and hover to a waypoint under guidance from the navigation computer.

(d) SAR pattern, transition down, and hover near a target over which the helicopter has flown.

(e) Transition up, climb, and capture a cruise height.

(f) Capture and track SAR search patterns generated by the navigation computer.

(g) Monitor the preselected hover height with automatic increase in collective if the aircraft height drops below the safe minimum height.

These SAR modes are intended to be used over large bodies of water in areas clear of obstructions. Further, use of the modes that transition down from cruise to hover will include operation at airspeeds below V_{MINI}.

The SAR system only entails navigation, flight control, and coupled AFCS operation of the helicopter. The system does not include additional equipment that may be required for over

water flight or external loads to meet other operational requirements.

Applicability

These special conditions apply to the Sikorsky Model S–76D helicopter. Should Sikorsky apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(d).

Conclusion

This action affects only certain novel or unusual design features on one model (*i.e.,* S–76D) of helicopter. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 29

Aircraft, Aviation safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Sikorsky Aircraft Corporation Model S–76D helicopters when the optional Search and Rescue (SAR) Automatic Flight Control System (AFCS) is installed.

In addition to the 14 CFR part 29 certification requirements for helicopter instrument flight (Appendix B), the following additional requirements must be met for certification of the SAR AFCS:

(a) SAR Flight Modes. The coupled SAR flight modes must provide:

(1) Safe and controlled flight in three axes (lateral and longitudinal position/speed and height/vertical speed) at all airspeeds from instrument flight minimum speed (VMINI) to a hover within the maximum demonstrated wind envelope.

(2) Automatic transition to the helicopter instrument flight (Appendix B) envelope as part of the normal SAR mode sequencing.

(3) A pilot-selectable Go-Around mode that safely interrupts any other coupled mode and automatically transitions the helicopter to the instrument flight (Appendix B) envelope.

(4) A means to prevent unintended flight below a safe minimum height. Pilot-commanded descent below the safe minimum height is acceptable provided the alerting requirements in paragraph (b)(7)(i) of these Special Conditions alert the pilot of this descent below safe minimum height.

(b) SAR Mode System Architecture. To support the integrity of the SAR modes, the following system architecture is required:

(1) A system for limiting the engine power demanded by the AFCS when any of the automatic piloting modes are engaged, so full authority digital engine control power limitations, such as torque and temperature, are not exceeded.

(2) A system providing the aircraft height above the surface and final pilot-selected height at a location on the instrument panel in a position acceptable to the FAA that will make it plainly visible to and usable by any pilot at their station.

(3) A system providing the aircraft heading and the pilot-selected heading at a location on the instrument panel in a position acceptable to the FAA that will make it plainly visible to and usable by any pilot at their station.

(4) A system providing the aircraft longitudinal and lateral ground speeds and the pilot-selected longitudinal and lateral ground speeds when used by the AFCS in the flight envelope where airspeed indications become unreliable. This information must be presented at a location on the instrument panel in a position acceptable to the FAA that is plainly visible to and usable by any pilot at their station.

(5) A system providing wind speed and wind direction when automatic piloting modes are engaged or transitioning from one mode to another.

(6) A system that monitors for flight guidance deviations and failures and contains an alerting function that provides the flight crew with enough information to take appropriate corrective action.

(7) An alerting system that provides visual or aural alerts, or both, to the flight crew under any of the following conditions:

(i) When the stored or pilot-selected safe minimum height is reached.

(ii) When a SAR mode system malfunction occurs.

(iii) When the AFCS changes modes automatically from one SAR mode to another. For normal transitions from one SAR mode to another, a single visual or aural alert may suffice. For a SAR mode malfunction or a mode having a time-critical component, the flight crew alerting system must activate early enough to allow the flight crew to take timely and appropriate action. The alerting system means must be designed to alert the flight crew in order to minimize crew errors that could create an additional hazard.

(8) The SAR system hoist operator control is considered a flight control with limited authority and must comply with the following:

(i) The hoist operator control must be designed and located to provide for convenient operation and to prevent confusion and inadvertent operation.

(ii) The helicopter must be safely controllable by the hoist operator control throughout the range of that control.

(iii) The hoist operator control may not interfere with the safe operation of the helicopter.

(iv) Pilot and copilot flight controls must be able to smoothly override the limited control authority of the hoist operator control, without exceptional piloting skill, alertness, or strength, and without the danger of exceeding any other limitation because of the override.

(9) The reliability of the AFCS must be related to the effects of its failure. The occurrence of any failure condition that would prevent continued safe flight and landing must be extremely improbable. For any failure condition of the AFCS which is not shown to be extremely improbable:

(i) The helicopter must be safely controllable and capable of continued safe flight without exceptional piloting skill, alertness, or strength. Additional unrelated probable failures affecting the control system must be evaluated.

(ii) The AFCS must be designed so that it cannot create a hazardous deviation in the flight path or produce hazardous loads on the helicopter during normal operation or in the event of a malfunction or failure, assuming corrective action begins within an appropriate period of time. Where multiple systems are installed, subsequent malfunction conditions must be evaluated in sequence unless their occurrence is shown to be improbable.

(10) A functional hazard assessment and a system safety assessment must address the failure conditions associated with SAR operations.

(i) For SAR catastrophic failure conditions, changes may be required to the following:

(A) System architecture.

(B) Software and complex electronic hardware design assurance levels.

(C) High Intensity Radiated Field (HIRF) test levels.

(D) Instructions for continued airworthiness.

(ii) The assessments must consider all the systems required for SAR operations, including the AFCS, all associated AFCS sensors (for example, radio altimeter), and primary flight displays. Electrical and electronic

systems with SAR catastrophic failure conditions (for example, AFCS) must comply with the § 29.1317(a)(4) HIRF requirements.

(c) SAR Mode Performance Requirements.

(1) The SAR modes must be demonstrated for the requested flight envelope, including the following minimum sea-state and wind conditions:

(i) Sea State: Wave height of 2.5 meters (8.2 feet), considering both short and long swells. This is in addition to the Sea State demonstrated in reference to the airframe's ditching capability.

(ii) Wind: 25 knots headwind, 17 knots for all other azimuths.

(2) The selected hover height and hover velocity must be captured (including the transition from one captured mode to another captured mode) accurately and smoothly and not exhibit any significant overshoot or oscillation.

(3) The minimum use height (MUH) for the SAR modes must be no more than the maximum loss of height following any single failure or any combination of failures not shown to be extremely improbable, plus an additional margin of 15 feet above the surface. MUH is the minimum height at which any SAR AFCS mode may be engaged.

(4) The SAR mode system must be usable up to the maximum certified gross weight of the aircraft or to the lower of the following weights:

(i) Maximum emergency flotation weight.

(ii) Maximum hover Out-of-Ground Effect (OGE) weight.

(iii) Maximum demonstrated weight.

(d) Flight Characteristics.

(1) The basic aircraft must meet all of the 14 CFR part 29 airworthiness criteria for helicopter instrument flight (Appendix B).

(2) For SAR mode coupled flight below V_{MINI}, at the maximum demonstrated winds, the helicopter must be able to maintain any required flight condition and make a smooth transition from any flight condition to any other flight condition without requiring exceptional piloting skill, alertness, or strength, and without exceeding the limit load factor. This requirement also includes aircraft control through the hoist operator's control.

(3) For SAR modes at airspeeds below V_{MINI}, the following requirements of Appendix B to part 29 must be met and will be used as an extension to the IFR certification envelope of the basic aircraft:

(i) Static Longitudinal Stability: the requirements of paragraph IV of Appendix B are not applicable.

(ii) Static Lateral-Directional Stability: The requirements of paragraph V of Appendix B are not applicable.

(iii) Dynamic Stability: The requirements of paragraph VI of Appendix B are replaced with the following two paragraphs:

(A) Any oscillation must be damped and any aperiodic response must not double in amplitude in less than 10 seconds. This requirement must also be met with degraded upper modes of the AFCS. An ''upper mode'' is a mode that utilizes a fully coupled autopilot to provide an operational SAR profile.

(B) After any upset, the AFCS must return the aircraft to the last commanded position within 10 seconds or less.

(4) With any of the upper modes of the AFCS engaged, the pilot must be able to manually recover the aircraft and transition to the normal (Appendix B) IFR flight profile envelope without exceptional skill, alertness, or strength.

(e) One-Engine Inoperative (OEI) Performance Information.

The following performance information must be provided in the Rotorcraft Flight Manual Supplement (RFMS). OEI performance information and emergency procedures, providing the maximum weight that will provide a safe landing (or ditching) or the ability to fly away following failure of the critical engine in a hover. The maximum weight must be presented as a function of the hover height for the temperature and pressure altitude range requested for certification. The effects of wind must be reflected in the hover performance information. These OEI performance requirements do not replace performance requirements that may be needed to comply with the airworthiness or operational standards (§ 29.865 or 14 CFR part 133) for external loads or human external cargo.

(f) RFMS.

(1) The RFMS must contain, at a minimum:

(i) Limitations necessary for safe operation of the SAR system, including:

(A) Minimum crew requirements. No fewer than 2 pilots, except for approved external load operations that will also require a hoist operator.

(B) Maximum SAR weight as determined by the lower of the SAR Mode performance requirement of paragraph (c)(4) of these Special Conditions or the aircraft performance information provided by paragraph (e) of these Special Conditions.

(C) Maximum demonstrated sea state conditions for ditching compliance.

(D) Engagement criteria for each of the SAR modes to include MUH, as determined in paragraph (c)(3) of these Special Conditions.

(E) The prohibition of external load operations requiring OEI hover capability.

(ii) Normal and emergency procedures for operation of the SAR system (including operation of the hoist operator control), with AFCS failure modes, AFCS degraded modes, and engine failures.

(iii) Performance information:

(A) OEI performance and height-loss.

(B) Hover OGE performance information, utilizing OEI continuous and time-limited power ratings.

(C) The maximum wind envelope demonstrated in flight test.

(D) Information and/or advisory information concerning operations in a heavy salt spray environment, including any airframe or power effects as a result of salt encrustation.

(g) Flight Demonstration.

(1) Before approval of the SAR system, an acceptable flight demonstration of all the coupled SAR modes is required.

(2) The AFCS must provide fail-safe operations during coupled maneuvers. The demonstration of fail-safe operations must include a pilot workload assessment associated with manually flying the aircraft to an altitude greater than 200 feet above the surface and an airspeed of at least the best rate of climb airspeed (Vy).

(3) For any failure condition of the SAR system not shown to be extremely improbable, the pilot must be able to make a smooth transition from one flight mode to another without exceptional piloting skill, alertness, or strength.

(4) Failure conditions that are not shown to be extremely improbable must be demonstrated by analysis, ground testing, or flight testing. For failures demonstrated in flight, the following normal pilot recovery times are acceptable:

(i) Transition modes (Cruise-to-Hover/Hover-to-Cruise) and Hover modes: Normal pilot recognition plus 1 second.

(ii) Cruise modes: Normal pilot recognition plus 3 seconds.

(5) All AFCS malfunctions must include evaluation at the low-speed and high-power flight conditions typical of SAR operations. Additionally, AFCS hard-over, slow-over, and oscillatory malfunctions, particularly in yaw, require evaluation. AFCS malfunction testing must include a single or a combination of failures (such as erroneous data from and loss of the radio altimeter, attitude, heading, and

altitude sensors) that are not shown to be extremely improbable.

(6) The flight demonstration must include the following environmental conditions:

(i) Swell into wind.

(ii) Swell and wind from different directions.

(iii) Cross swell.

(iv) Swell of different lengths (short and long swell).

(7) The flight demonstration must also evaluate OEI procedures from hover while hoisting an external load.

Issued in Fort Worth, Texas, on December 9, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–29594 Filed 12–17–14; 8:45 am]

BILLING CODE 4910–13–P

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains final rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to clarify the water uses involved in hydrocarbon development that are subject to the consumptive use regulations, as implemented by the Approval by Rule (ABR) program.

DATES: Effective January 23, 2015.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., Regulatory Counsel, telephone: 717–238–0423, ext. 1312; fax: 717–238–2436; email: *joyler@srbc.net.* Also, for further information on the final rulemaking, visit the Commission's Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION:

Comments and Responses to Proposed Rulemaking

Notice of proposed rulemaking was published in the **Federal Register** on September 26, 2014 (79 FR 57850); the *New York Register* on October 1, 2014; the *Maryland Register* on October 3, 2014; and the *Pennsylvania Bulletin* on November 1, 2014. The Commission convened a public hearing on November 6, 2014, in Harrisburg, Pennsylvania and a written comment period was held open through November 17, 2014.

General Comments

Comment: The Commission received comments supportive of the changes in the terms and definitions noted in the Rulemaking. The changes are reflective of the nature of the industry and are plainly straightforward.

Response: The Commission appreciates the comments.

Comment: One commenter asked that the rulemaking not be adopted because the proposed changes restrict Commission oversight.

Response: The Commission disagrees and notes that the proposed regulations strengthen its program and clarify a greater scope of water uses by the hydrocarbon development industry subject to the Commission's ABR program.

Comment: The regulations should provide for an appeal by an impacted stakeholder before a permit is issued.

Response: The ABR process provides for a comment period during which stakeholders may raise issues of concern regarding a project before an approval is issued. This public comment period is not changed by the rulemaking. No changes to the Commission's rules related to hearings and administrative appeals were proposed and are beyond the scope of this rulemaking. Further, allowing an appeal of a Commission approval prior to the issuance of such an approval would run contrary to longstanding principles of administrative law.

Comments by Section, Part 806

Section 806.3—Definitions

Comment: Revise the definition of ''construction'' to include the pad sites, access roads, rights-of-way for pipelines and intake area clearings as such project activities affect the environment.

Response: The Commission's definition of construction is appropriate for regulation of the withdrawal and consumptive use of water and appropriate for the ABR program for the use of water by hydrocarbon development projects. The ABR program does not regulate all environmental impacts of hydrocarbon development, rather the environmental impacts to which the commenter refers are regulated by the appropriate member jurisdictions through various permitting programs, including erosion and sediment control and oil and gas management. The ABR Program supports the regulation of other aspects of hydrocarbon development projects by requiring in § 806.22(f)(7) that the project sponsor obtain all necessary permits or approvals required for the project from other federal, state or local government agencies.

Comment: The term ''drilling pad site'' should be changed to ''well pad site'' because many of the activities that are regulated on the pad site go beyond just drilling.

Response: The term ''drilling pad site'' is currently used in the Commission's regulations, but was not defined. The term is used in several sections and subsections not subject to the proposed rulemaking. For this reason, the Commission declines to make this change in this final rule. However, the Commission believes the comment has merit and will consider it in a forthcoming comprehensive rulemaking that is currently under development.

Comment: In the definition of ''hydrocarbon development project,'' the term ''hydro-seeding'' is used. It is recommended to use the term ''hydroseeding or other revegetation activities'' instead.

Response: The Commission agrees with the comment and has made the change in the final rule.

Comment: Language should be added clarifying that all water use on-site requires Commission approval.

Response: The definition of ''hydrocarbon development project'' contains language that covers all water-related activities and facilities on the drilling pad site, including activities and facilities associated with the production, maintenance, operation, closure, plugging and restoration of wells or drilling pad sites that would require consumptive water usage. The use of water for these activities will be subject to Commission approval through the ABR program.

Comment: The Commission is to be applauded for revising its definitions to include water used not only for well development and drilling, but also for infrastructure.

Response: The Commission appreciates the comment. The final rule retains the language extending the ABR approvals to specific water uses off the drilling pad site, which are water used for hydro-seeding or other revegetation activities, dust suppression, and hydro-excavation of access roads and underground lines, as well as tank cleanings, related to a drilling pad site or centralized impoundments.

Comment: The Commission should extend its review to beyond the well pad.

Response: The definition of ''hydrocarbon development project'' includes specified facilities and activities off the drilling pad site as noted in the prior response.

Comment: A commenter opposes the Commission's responsibility for oversight ending once a gas well has been plugged.

Response: The definition of ''hydrocarbon development project'' provides such a project continues ''until all post-plugging restoration is completed in accordance with all applicable member jurisdiction requirements.'' The Commission finds that this is an appropriate time for the Commission's jurisdiction under § 806.22(f) to cease as the project sponsor's consumptive water use ceases at that point.

Comment: The definition of ''project'' should be expanded to go beyond any ''independent activity.''

Response: The Commission declines to expand the scope of the definition of ''project.'' The term ''project'' as defined matches the definition in Section 1.2 of the Susquehanna River Basin Compact, Public Law 91–575. The rulemaking provides specific definitions for ''hydrocarbon development project'' and ''unconventional natural gas development project'' to add clarity to how these activities trigger the Commission's oversight and jurisdiction.

Comment: The definition of ''project'' contains a typographical error. The word ''additional'' should be ''addition.''

Response: The Commission agrees and the correction is made in the final rulemaking.

Section 806.15—Notice of Application

Comment: Section 806.15(e) should be amended to require notice in a newspaper of general circulation ''serving the'' area which the water obtained from such source will be initially used, replacing the existing language of a newspaper of general circulation ''in each'' area.

Response: This specific change was not a part of the proposed rulemaking. The Commission believes the existing language is adequate.

Section 806.22—Standards for Consumptive Uses of Water

Comment: The term for approval under section 806.22(e)(7) should be 5 years instead of 15 years.

Response: The Approval by Rule in subsection 806.22(e) relates to projects where the sole source of water is from a public water supply. This type of ABR approval currently has a term of 15 years, and the Commission did not propose or contemplate any changes to this term in the proposed rulemaking. The Commission declines to make any change to the term provided in subsection 806.22(e)(7).

Comment: The wording of subsection 806.22(f)(4) should be changed from ''per gas well'' to ''per oil and gas well'' because hydrocarbon development projects under the ABR program can relate to oil wells, gas wells or both.

Response: The Commission agrees with the comment and has made the change in this final rulemaking.

Comment: The change to subsection 806.22(f)(4) from ''dust control'' to ''other project related activity'' is an attempt to obfuscate an industry practice of using hydrofracturing wastewater by spraying it on the roads for dust suppression by folding into a broader term.

Response: The Commission disagrees with the comment. The term ''dust control'' in subsection 806.22(f)(4) has been replaced with the broader term ''other project related activity'' to appropriately reflect the broader scope of the consumptive water uses regulated by the Commission. The final regulations clarify that any consumptive uses of water for dust control on roads related to a drilling pad site must be accounted for under the project sponsor's ABR approval. Whether a project sponsor can use waste water for dust suppression on roads is a matter regulated by the Commission's member jurisdictions, and is beyond the scope of this rulemaking.

Comment: In subsection 806.22(f)(10), the Commission noted that it was considering whether to change the duration of approvals issued under the ABR program from 5 years to a longer term of up to 15 years and specifically sought public comment regarding such change. Some commenters expressed support for a change to 15 years out of interest in greater flexibility for the industry in planning and suggested that a longer term would potentially result in fewer sources being permitted for use. One commenter recommended an initial term of five years and renewal terms of 15 years. Other commenters opposed any extension of the current 5-year term noting: Shorter terms allow the Commission to better consider evolving technologies and changes in industry practices; longer terms reduce opportunities for public input into ABRs; and shorter terms allow the Commission to more frequently adjust necessary management practices, procedures and reporting requirements.

Response: The rulemaking as proposed retained the 5-year term currently in subsection 806.22(f)(10). Based on its deliberations, including the public comment, the Commission has decided to retain the 5-year term in this final rulemaking.

Transition Issues

This rulemaking takes effect on January 23, 2015. The Commission recognizes that project sponsors may have let ABRs expire for currently operating projects that, based on the clarifications provided in this final rule, will need to be covered under an ABR approval. The Commission encourages project sponsors to submit applications for these previously approved hydrocarbon development projects in a timely fashion. If application is made prior to June 30, 2015, the application may be made at the fee for ABR renewals. Any applications made after June 30, 2015, for currently operating projects that allowed their ABR approvals to expire will be made at the fee for new ABR applications and will be subject to active compliance efforts by the Commission, up to and including the assessment of civil penalties.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

■ 1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—General Provisions

■ 2. In § 806.3:
■ a. Revise the definition for ''Construction'';
■ b. Add, in alphabetical order, a definition of ''Drilling pad site'';
■ c. Remove the definition for ''*Hydrocarbon development''* and add in its place, in alphabetical order, the definition of ''*Hydrocarbon development project'';*
■ d. Revise the definition of ''*Project'';* and
■ e. Remove the definition for ''*Unconventional natural gas development''* and add in its place, in alphabetical order, the definition of ''*Unconventional natural gas development project''.*

The revisions and additions read as follows:

§ 806.3 Definitions.

* * * * *

Construction. To physically initiate assemblage, installation, erection or

fabrication of any facility, involving or intended for the withdrawal, conveyance, storage or consumptive use of the waters of the basin. For purposes of unconventional natural gas development projects subject to review and approval pursuant to § 806.4(a)(8), initiation of construction shall be deemed to commence upon the drilling (spudding) of a gas well, or the initiation of construction of any water impoundment or other water-related facility to serve the project, whichever comes first.

* * * * *

Drilling pad site. The area occupied by the equipment or facilities necessary for or incidental to drilling, production or plugging of one or more hydrocarbon development wells and upon which such drilling has or is intended to occur.

* * * * *

Hydrocarbon development project. A project undertaken for the purpose of extraction of liquid or gaseous hydrocarbons from geologic formations, including but not limited to the drilling, casing, cementing, stimulation and completion of unconventional natural gas development wells, and all other activities and facilities associated with the foregoing or with the production, maintenance, operation, closure, plugging and restoration of such wells or drilling pad sites that require water for purposes including but not limited to, re-stimulation and/or re-completion of wells, fresh water injection of production tubing, use of coiled tubing units, pumping, cement hydration, dust suppression, and hydro-seeding or other revegetation activities, until all post-plugging restoration is completed in accordance with all applicable member jurisdiction requirements. The project includes water used for hydro-seeding or other revegetation activities, dust suppression and hydro-excavation of access roads and underground lines, as well as cleaning of tanks, related to a drilling pad site and centralized impoundments.

* * * * *

Project. Any work, service, activity or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

* * * * *

Unconventional natural gas development project. A hydrocarbon development project undertaken for the purpose of extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation or recovery techniques.

* * * * *

■ 3. In § 806.15, revise paragraph (e) to read as follows:

§ 806.15 Notice of application.

* * * * *

(e) For applications submitted under § 806.22(f)(13) for a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in each area within which the water obtained from such source will initially be used for hydrocarbon development.

* * * * *

■ 4. In § 806.22, revise paragraphs (e)(7), (f) introductory text, (f)(1), (f)(4), (f)(10), (f)(11) introductory text, and (f)(12) to read as follows:

§ 806.22 Standards for consumptive uses of water.

* * * * *

(e) * * *

(7) Approval by rule shall be effective upon issuance by the Executive Director to the project sponsor, shall expire 15 years from the date of such issuance, and supersede any previous consumptive use approvals to the extent applicable to the project.

* * * * *

(f) Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development projects.

(1) Any unconventional natural gas development project subject to review and approval under § 806.4(a)(8), or any other hydrocarbon development project subject to review and approval under §§ 806.4, 806.5, or 806.6, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

* * * * *

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per oil or gas well or drilling pad site, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and other project-related activity. The foregoing shall apply to all water, including stimulation additives, flowback, drilling fluids, formation fluids and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

* * * * *

(10) Approval by rule shall be effective upon issuance by the Executive Director to the project sponsor, shall expire five years from the date of such issuance, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

* * * * *

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a), or by the Executive Director pursuant to paragraph (f)(14) of this section, and issued to persons other than the project sponsor, provided any such source is approved for use in hydrocarbon development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission.

* * * * *

Dated: December 12, 2014.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2014–29643 Filed 12–17–14; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2014–0948]

Drawbridge Operation Regulation; Red River, Alexandria, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Jackson Street Drawbridge across the Red River, mile 88.6, at Alexandria, Louisiana. The deviation is necessary to allow the bridge owner to install four new pinion gears that are essential to the continued safe operation of the drawbridge. This deviation allows the bridge to remain in the closed-to-navigation position and not open to vessel traffic.

DATES: This deviation is effective from 7 a.m. April 6, 2015 to 7 p.m. April 15, 2015. This deviation will be enforced from 7 a.m. April 6 to 7 p.m. April 8, 2015 and from 7 a.m. April 13 to 7 p.m. April 15, 2015.

ADDRESSES: The docket for this deviation, [USCG–2014–0948] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone (314) 269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation & Development requested a temporary deviation for the Jackson Street Drawbridge, across the Red River, mile 88.6, at Alexandria, Louisiana to remain in the closed-to-navigation position from 7 a.m. April 6 to 7 p.m. April 8, 2015 and from 7 a.m. April 13 to 7 p.m. April 15, 2015.

The Jackson Street Drawbridge currently operates in accordance with 33 CFR 117.491(b), which states the drawbridge shall open on signal if at least eight hours notice is given; except that, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. the draw need not be opened Monday through Friday except holidays.

There are no alternate routes for vessels transiting this section of the Red River.

The Jackson Street Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 40.0 feet above normal pool. Navigation on the waterway primarily consists of commercial tows and recreational watercraft and will not be significantly impacted. This temporary deviation has been coordinated with waterway users. No objections were received. The Coast Guard will inform waterway users through the Local and Broadcast Notice to Mariners of the closure period so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 3, 2014.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2014–29661 Filed 12–17–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0661; FRL–9920–47–Region–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Ozone and $PM_{2.5}$ Standards

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a submission by the State of Indiana as a revision to the Indiana State Implementation Plan (SIP). The submitted regulations revise Indiana's ambient air quality standards for ozone and particulate matter (PM) to be consistent with EPA's 2008 ozone and 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). EPA is therefore approving this SIP submission, in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective February 17, 2015, unless EPA receives adverse comments by January 20, 2015. 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–2014–0661, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance 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–2014–0661. 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 Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@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. Background
II. Summary and Analysis of SIP Revision
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

On March 27, 2008 (73 FR 16436), EPA revised the 8-hour ozone primary and secondary NAAQS to a level of 0.075 parts per million (ppm) to provide increased protection for children and other at-risk populations against an array of ozone-related adverse health effects. These standards are based on the 3-year average of the annual fourth-highest daily maximum 8-hour concentration.

On January 15, 2013 (78 FR 3086), EPA revised the primary (health-based) annual $PM_{2.5}$ NAAQS to a level of 12.0 micrograms per cubic meter ($\mu g/m^3$) and retained the 24-hour primary NAAQS for $PM_{2.5}$ at a level of 35 $\mu g/m^3$. EPA also retained the existing annual $PM_{2.5}$ secondary (welfare-based) NAAQS set at a level of 15.0 $\mu g/m^3$, and retained the existing 24-hour coarse particle (PM_{10}) primary and secondary NAAQS at 150 $\mu g/m^3$.

On August 20, 2014, the Indiana Department of Environmental Management (IDEM) submitted revisions to 326 Indiana Administrative Code (IAC) 1–3–4, ''Ambient air quality standards''. These revisions make Indiana's 8-hour ozone and annual $PM_{2.5}$ ambient air quality standards consistent with the NAAQS.

The CAA specifies that EPA must reevaluate the appropriateness of each of the NAAQS every five years. As part of the process, EPA reviewed the latest health-based research and determined that several NAAQS revisions were necessary to protect public health and welfare.

II. Summary and Analysis of SIP Revision

IDEM's August 20, 2014, submission consists of amendments to 326 IAC 1–3–4, which includes the revised ambient air quality standards for ozone and $PM_{2.5}$. These revisions are: inclusion of the 8-hour ozone standard of 0.075 ppm, inclusion of the annual $PM_{2.5}$ primary standard of 12.0 $\mu g/m^3$, retention of the annual $PM_{2.5}$ level of 15.0 $\mu g/m^3$ as the secondary standard, incorporation by reference of appendix N to 40 CFR 50 (''Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$''), and incorporation by reference of appendix P to 40 CFR 50 (''Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone''). The SIP submission is consistent with the current NAAQS.

On April 9, 2014, IDEM held a public hearing for the SIP submission. No comments were received at this hearing.

III. What action is EPA taking?

EPA is approving the SIP submission pertaining to the amendments of Indiana's ambient air quality standards since it is consistent with the NAAQS. Specifically, we are approving revised rule 326 IAC 1–3–4, ''Ambient air quality standards'' into the state SIP.

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 February 17, 2015 without further notice unless we receive relevant adverse written comments by January 20, 2015. 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 February 17, 2015.

IV. Statutory and Executive Order Reviews

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

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

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175, nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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, Reporting and recordkeeping requirements.

Dated: December 5, 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. In § 52.770 the table in paragraph (c) is amended by revising the entry for 1–3–4 under ''Article 1. General Provisions'' ''Rule 3. Ambient Air Quality Standards'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
Article 1. General Provisions				
* * * * * * *				
Rule 3. Ambient Air Quality Standards				
* * * * * * *				
1–3–4	Ambient air quality standards	08/07/2014	12/18/2014, [insert **Federal Register** citation].	
* * * * * * *				

* * * * *

[FR Doc. 2014–29586 Filed 12–17–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 14–1773]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division amends the FM Table of Allotments to remove certain vacant FM allotments that are reserved for noncommercial educational (''NCE'') use. These FM assignments are currently authorized stations and, therefore, are no longer considered vacant FM allotments. FM assignments for authorized stations and reserved facilities will be reflected solely in Media Bureau's Consolidated Database System (CDBS).

DATES: Effective December 18, 2014.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order,* DA 14–1773, adopted December 4, 2014, and released December 5, 2014. The full text of this document is available for inspection and copying during normal business hours in the Commission's Reference Center 445 12th Street SW., Washington, DC 20554. The complete text of this document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com.* The Commission will not send a copy of this *Report and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of

particular applicability. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCASTING SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.202 [Amended]

■ 2. Amend § 73.202(b), the Table of FM Allotments, as follows:
■ a. Remove Anniston, under Alabama, Channel *261C3.
■ b. Remove Willcox, under Arizona, Channel *223C3.
■ c. Remove McKinleyville, under California, Channel *277C3.
■ d. Remove Big Pine Key, under Florida, Channel *239A and Live Oak, Channel *261A.
■ e. Remove Reynolds, under Georgia, Channel *245A.
■ f. Remove Weiser, under Idaho, Channel *280C1.
■ g. Remove Canton, under Illinois, Channel *277A; Clifton, Channel *297A; and Freeport, Channel *295A.
■ h. Remove Columbus, under Indiana, Channel *228A and Farmersburg, Channel *242A.
■ i. Remove Moville, under Iowa, Channel *246A.
■ j. Remove Smith Mills, under Kentucky, Channel *233A.
■ k. Remove Ringgold, under Louisiana, Channel *253C3.
■ l. Remove Hubbardston, under Michigan, Channel *279A.
■ m. Remove Huntsville, under Missouri, Channel *278C2.
■ n. Remove Alamo Community, under New Mexico, Channel *298A.
■ o. Remove Berthold, under North Dakota, Channel *264C.
■ p. Remove Weatherford, under Oklahoma, Channel *286A and Wynnewood, Channel *283A.
■ q. Remove Madras, under Oregon, Channel *243C1 and The Dalles, Channel *268C3.
■ r. Remove Susquehanna, under Pennsylvania, Channel *227A.
■ s. Remove Burnet, under Texas, Channel *240A and Denver City, Channel *248C2.
■ t. Remove Shenandoah, under Virginia, Channel *296A.
■ u. Remove Chewlah, under Washington, Channel *274C3.
■ v. Remove St Marys, under West Virginia, Channel *287A.
■ w. Remove Augusta, under Wisconsin, Channel *268C3 and Washburn, Channel *284A.
■ x. Remove Channel *226A, under Virgin Islands, at Charlotte Amalie.

[FR Doc. 2014–29584 Filed 12–17–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2005–79; FAR Case 2015–003; Item I; Docket No. 2014–0050; Sequence No. 1]

RIN 9000–AM82

Federal Acquisition Regulation; Establishing a Minimum Wage for Contractors

Correction

In rule document 2014–29137 beginning on page 74544 in the issue of Monday, December 15, 2014, make the following corrections:

1. On page 74545, in the first column, in the 8th line, ''February 13, 2015'' should read ''December 15, 2014''.

2. On the same page, in the second column, in the seventh line, remove the word ''Applicability''.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 3. On page 74549, in Part 1, in the third column, in the fourteenth and fifteenth lines, the heading for Part 1 is correction to read as set forth above.

§ 52.212–5 [Corrected]

■ 4. On page 74552, in section 52.212–5(c)(10), in the second column, in the sixteenth line, ''DEC 2014)'' should read ''(DEC 2014)''.

[FR Doc. C1–2014–29137 Filed 12–17–14; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1511 and 1552

[EPA–HQ–OARM–2012–0476; FRL 9920–48–OARM]

EPAAR Clause for Work Assignments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to update policy, procedures, and contract clauses. This final rule updates the EPAAR clause, *Work Assignments.*

DATES: This final rule is effective on December 18, 2014.

ADDRESSES: *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 Office of Environmental Information (OEI) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–4522; email address: *valentino.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 3, 2009, the Office of Acquisition Management (OAM) Head of the Contracting Activity (HCA) issued a class deviation that revised the prescription for the subject clause by eliminating the requirement that EPA include total estimated labor hours when issuing work assignments. The revised prescription is necessary

because including total estimated labor hours when work assignments are issued undermines the negotiation process by providing the contractor no incentive to seek more efficient or innovative approaches to meet the Government's needs under a work assignment. The revised prescription advises contracting officers (COs) that when the nature of the work is nonspecific with changing circumstances (*e.g.,* services at new hazardous waste sites, Research & Development in new areas with uncertain potential results) then the CO may provide the contractor with the estimated labor hours. Otherwise, COs should not authorize the contractor to expend the level of effort beyond the effort needed to develop the work plan. The revised prescription was published in the **Federal Register** on February 14, 2012. As a result, the subject clause text is being updated to make it consistent with the revised prescription.

In addition, the work assignment clause prescription is modified to make the clause applicable to EPA cost-reimbursement contracts, and the subject prescription and clause are being updated to add two alternate clause versions. Currently the subject clause has Alternates I and II that are used in Superfund contracts and require the contractor to provide a COI certification. This clause update adds Alternates III and IV which are substantially the same as I and II but are written for non-Superfund contracts. A class deviation for Alternates III and IV was issued by the HCA on June 29, 1994. On July 18, 2014 (79 FR 41949) EPA sought comments on the proposed rule and received no comments.

II. Final Rule

This final rule updates the EPAAR to revise paragraphs (b) and (c) in EPAAR clause 1552.211–74, *Work Assignments,* and revises paragraph (b) of the corresponding 1511.011–74 prescription. Alternates III and IV are also being added to clause 1552.211–74.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and therefore, not subject to review under the E.O.

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.* No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or recordkeeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution of Use'' (66 FR 28335 (MAY 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering 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 (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rulemaking does not involve human health or environmental affects.

List of Subjects

48 CFR Part 1511

Government procurement.

48 CFR Part 1552

Government procurement, Reporting and recordkeeping requirements.

Dated: December 1, 2014.

John R. Bashista,

Director, Office of Acquisition Management.

Therefore, 48 CFR chapter 15 is amended as set forth below:

PART 1511—DESCRIBING AGENCY NEEDS

■ 1. The authority citation for 48 CFR part 1511 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

■ 2. Revise paragraph (b) of 1511.011–74 to read as follows:

1511.011–74 Work Assignments.

* * * * *

(b) *Contract Clause.* The CO shall insert the contract clause at 1552.211.74, *Work Assignments,* in cost-reimbursement contracts when work assignments are used.

(1) For Superfund contracts, except for contracts which require annual conflict of interest certificates (*e.g.,* Site-Specific contracts, the Contract Laboratory Program (CLP), Sample Management Office (SMO) contracts), the CO shall use the clause with either Alternate I or Alternate II. Alternate I shall be used for contractors who have at least three (3) years of records that may be searched for certification purposes. Alternate II shall be used for contractors who do not have at least three (3) years of records that may be searched.

(2) For non-Superfund contracts, the CO shall use the clause with either Alternate III or Alternate IV. Alternate III shall be used for contractors who have at least three (3) years of records that may be searched for certification purposes. Alternate IV shall be used for contractors who do not have at least three (3) years of records that may be searched.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for 48 CFR part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 4. Revise 1552.211–74 to read as follows:

1552.211–74 Work assignments.

As prescribed in 1511.011–74, insert the following contract clause in cost-reimbursement contracts when work assignments are to be used.

Work Assignments (DEC 2014)

(a) The contractor shall perform work under this contract as specified in written work assignments issued by the Contracting Officer.

(b) Each work assignment may include (1) a numerical designation, (2) approved workplan labor hours or an estimated initial level of effort provided in accordance with 1511.011–74, (3) the period of performance and schedule of deliverables, and (4) the description of the work.

(c) The Contractor shall acknowledge receipt of each work assignment by returning to the Contracting Officer a signed copy of the work assignment within __ calendar days after its receipt. The Contractor shall begin working on a work plan immediately upon receipt of a work assignment. Within __ calendar days after receipt of a work assignment, the Contractor shall submit __ copies of a work plan to the Contract-level Contracting Officer's Representative and __ copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and a detailed cost estimate. Within __ calendar days after receipt of the work plan, the Contracting Officer will provide written approval or disapproval of it to the Contractor. The Contractor is not authorized to start work without an approved work plan unless approved by the Contracting Officer or otherwise specified. Also, if the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer approves the work plan.

(d) This clause does not change the requirements of the ''Level of Effort'' clause, nor the notification requirements of either the ''Limitation of Cost'' or ''Limitation of Funds'' clauses.

(e) Work assignments shall not allow for any change to the terms or conditions of the contract. Where any language in the work assignment may suggest a change to the terms or conditions, the Contractor shall immediately notify the Contracting Officer.

(End of clause)

Alternate I. As prescribed in 1511.011–74, modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest (COI) certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a COI certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential COIs, but no additional COI certifications are required.

Before submitting the COI certification, the Contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the

Contractor's knowledge and belief that all actual or potential organizational COIs have been reported to the Contracting Officer, or that to the best of the Contractor's knowledge and belief, no actual or potential organizational COIs exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational COIs to the Contractor. The COI certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential COI arising during performance of this work assignment or other work related to this site.

Alternate II. As prescribed in 1511.011–74, modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest (COI) certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a COI certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential COIs, but no additional COI certifications are required.

Before submitting the COI certification, the Contractor shall initially search through all of its available records to identify any actual or potential COIs. During the first three years of this contract, the Contractor shall search through all records created since the beginning of the contract plus the records of the Contractor prior to the award of the contract until a minimum of three years of records are accumulated. Once three years of records have accumulated, prior to certifying, the Contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational COIs have been reported to the Contracting Officer, or that to the best of the Contractor's knowledge and belief, no actual or potential organizational COIs exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational COIs to the Contractor. The COI certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential COI arising during performance of this work assignment or other work related to this site.

Alternate III. As prescribed in 1511.011–74, modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest (COI) certification.

Before submitting the COI certification, the Contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief that all actual or potential organizational COIs have been reported to the Contracting Officer, or that to the best of the Contractor's knowledge and belief, no actual or potential organizational COIs exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational COIs to the Contractor. The COI certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential COI arising during performance of this work assignment.

Alternate IV. As prescribed in 1511.011–74, modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest (COI) certification.

Before submitting the COI certification, the Contractor shall initially search through all of its available records to identify any actual or potential COIs. During the first three years of this contract, the Contractor shall search through all records created since the beginning of the contract plus records of the Contractor prior to the award of the contract until a minimum of three years of records have accumulated. Once three years of records have accumulated, prior to certifying, the Contractor shall search its records, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief that all actual or potential organizational COIs have been reported to the Contracting Officer, or that to the best of the Contractor's knowledge and belief, no actual or potential organizational COIs exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational COIs to the Contractor. The COI certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential COI arising during performance of this work assignment.

(End of clause)

[FR Doc. 2014–29311 Filed 12–17–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 392 and 396

[Docket No. FMCSA–2012–0336]

RIN 2126–AB46

Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report (DVIR)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA rescinds the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies. This rule also harmonizes the pre- and post-trip inspection lists. It responds in part to the President's January 2011 Regulatory Review and Reform initiative, removing a significant information collection burden without adversely impacting safety. The Agency also makes a technical change to § 396.11 to eliminate redundant language.

DATES: This final rule is effective December 18, 2014.

Petitions for Reconsideration of this final rule must be submitted to FMCSA Administrator no later than January 20, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Mike Huntley, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, telephone: 202–366–4325.

SUPPLEMENTARY INFORMATION:

Executive Summary of the Benefits and Costs

This rule affects all motor carriers currently subject to 49 CFR 396.11, both private and for-hire, with the exception of operators of passenger-carrying CMVs. Current safety regulations require drivers employed by motor carriers to prepare a written report at the completion of each day's work, on each vehicle operated, that lists any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. This report must be submitted to the employing

motor carrier so that repairs can be made. Regulations now require drivers to file the DVIR at the end of each tour of duty, even if there are no vehicle defects to report. The rule eliminates the need to file a no-defect DVIR, except for operations involving passenger-carrying CMVs.

The no-defect DVIR imposes a substantial time and paperwork burden on the trucking industry, with no discernible safety benefit. The Agency estimates that non-passenger-carrying CMV drivers spend approximately 46.7 million hours each year completing no-defect DVIRs, time which could be dedicated to other purposes. FMCSA estimates that the monetized value of this time is currently $1.7 billion per year, which is the estimated benefit that would result from the adoption of the rule.

TABLE 1—SUMMARY OF THE MONETIZED BENEFITS, COSTS AND NET BENEFITS OF THE RULE

	Annual	10 Years, 7 percent discount rate	10 Years, 3 percent discount rate
Monetized Benefits	[1] $1.7	[1] $12.8	[1] $14.9
Costs	0	0	0
Net Benefits	[1] 1.7	[1] 12.8	[1] 14.9

[1] Billion.

Background

Presidential Executive Order (E.O.) 13563, ''Improving Regulation and Regulatory Review'' (issued January 18, 2011, and published January 21 at 76 FR 3821), prompted DOT to publish a notice in the **Federal Register** (76 FR 8940, February 16, 2011). This notice requested comments on a plan for reviewing existing rules, as well as identification of existing rules that DOT should review because they may be outmoded, ineffective, insufficient, or excessively burdensome. DOT placed all retrospective regulatory review comments, including a transcript of a March 14, 2011, public meeting, in docket DOT–OST–2011–0025. DOT received comments from 102 members of the public, with many providing multiple suggestions. FMCSA received one comment from the American Trucking Associations, Inc. (ATA) concerning what it considered duplicative driver vehicle inspection requirements in 49 CFR parts 392 and 396. Although FMCSA agrees that there is some duplication, the Agency did not believe that it resulted in unnecessary actions or an information collection burden. However, FMCSA did discover a related information collection burden that it considers unnecessary and removes in this final rule.

It has always been the responsibility of a CMV driver to report vehicle defects. In 1939, the Interstate Commerce Commission (ICC) issued regulations requiring every driver to submit a written report on the condition of the vehicle at the end of each day's work or tour of duty. At a minimum, the report had to include information about any vehicle defect or deficiency the driver discovered that would likely affect the safety of operation of that vehicle (4 FR 2294 at 2305, June 7, 1939). The ICC recommended, but did not require, that motor carriers use a 'Driver's Trip Report,' and it provided a sample report format in its 1939 notice. The sample report format included the driver's name, vehicle number, date, a list of 20 items for inspection, and a space for the driver and mechanic to note defects. This report is now called a DVIR, but the current rule does not include a sample report form. The requirements to prepare, submit, and retain a no-defect DVIR have been in the safety regulations since 1952 (17 FR 4422, 4452, May 15, 1952). In a separate report (54 M.C.C. 337, at 356, April 14, 1952) the ICC explained that it was revising its rule to improve motor carriers' inspection and maintenance procedures and recordkeeping. The ICC noted that the most substantial recordkeeping change proposed and adopted was for the driver to complete the vehicle condition report or trip ticket at the end of the day's work or tour of duty whether or not any defect or deficiency in the equipment is discovered, ''. . . in order to provide a continuous record of vehicle condition and to insure that the reports, particularly those involving defects, will be made out currently and maintained on a current basis.''

On December 17, 2008, FMCSA published a final rule to implement § 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, 1729, Aug. 10, 2005], dealing with the safety of chassis used to transport intermodal containers (73 FR 76794). Among other things, § 4118 called for the Secretary to mandate ''a process by which a driver or motor carrier transporting intermodal equipment [IME] is required to report to the intermodal equipment provider [IEP] or the provider's designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider's designated agent'' (49 U.S.C. 31151(a)(3)(L)). FMCSA's 2008 rule included a new code section—49 CFR 390.42—which prescribed the responsibilities of drivers and motor carriers when operating IME. Section 390.42(b) required the driver or motor carrier to report any damage to or deficiencies in certain IME parts and accessories at the time the equipment is returned to the IEP.

Importantly, FMCSA did not propose any changes to § 396.11(a), ''Report content,'' which requires—both for IME and non-IME—that ''If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate.''

On March 31, 2010, the Ocean Carrier Equipment Management Association (OCEMA) and Institute of International Container Lessors (IICL) jointly filed a petition for rulemaking to rescind the part of § 390.42(b) that required drivers to file no-defect DVIRs on IME they return to IEPs. OCEMA and IICL requested that FMCSA delete the sentence ''if no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate.''

The petitioners presented four arguments supporting their request:

1. Section 4118 of SAFETEA–LU requires DVIRs only for known damage or defects. Congress could have added a requirement to file no-defect DVIRs but did not do so.

2. There is significant risk that a large volume of no-defect DVIRs could overwhelm the small proportion (4 percent) of DVIRs that report damage or defects.

3. Data transmission, processing, and storage requirements for no-defect DVIRs could add significant unnecessary costs to intermodal operations without providing offsetting benefits.

4. Submission of no-defect DVIRs contributes to driver productivity losses in the form of congestion and delay at intermodal facilities.

On June 12, 2012 (77 FR 34846), the Agency published a final rule eliminating the requirement for drivers operating IME to submit—and IEPs to retain—DVIRs when the driver has neither found nor been made aware of any defects in the IME. The Agency now extends this relief from the paperwork requirement to all interstate motor carriers subject to Part 396 of the Federal Motor Carrier Safety Regulations (FMCSRs), except operators of passenger-carrying CMVs.

FMCSA emphasizes that the Agency is not foregoing the fundamental requirements of Part 393, Parts and Accessories Necessary for Safe Operation. Nor is it making any changes to any other element of the inspection, repair, and maintenance requirements of Part 396. Drivers will still be required to perform pre-trip evaluations of equipment condition, and complete DVIRs if any defects or deficiencies are discovered or reported during the day's operations. Motor carriers will still be required to have systematic inspection, repair, and maintenance programs (including preventative maintenance) and maintain records to prove measures are being taken to reduce to the extent practicable, the risk of mechanical problems happening while the vehicle is in operation. In addition, motor carriers will still be required to review driver vehicle inspections that list defects or deficiencies and take appropriate action before the vehicle is dispatched again. The Agency will retain the requirement for carriers to complete periodic or annual inspections, and maintain documentation for the individuals who perform periodic inspections and individuals responsible for performing brake-related inspection, repair, and maintenance tasks. Furthermore, these CMVs will continue to be subject to roadside inspections. In short, the existing regulations place shared responsibility on drivers and motor carriers to ensure that CMVs used in interstate commerce are in safe and proper operating condition. This final rule does not change a driver's obligation to report on the condition of the CMVs and to report to the motor carrier any defects or deficiencies that could affect the safety of its operation.

Legal Basis for the Rulemaking

This rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) [49 U.S.C. 31502(b)] and the Motor Carrier Safety Act of 1984 (1984 Act) [49 U.S.C. 31136(a)], both of which are broadly discretionary.

The 1935 Act provides that the Secretary of Transportation (Secretary) may prescribe requirements for:

- Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier (section 31502(b)(1)), and
- qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (section 31502(b)(2)).

This rulemaking is based on the Secretary's authority under both section 31502(b)(1) and (2).

The 1984 Act authorizes the Secretary to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a) requires the Secretary to publish regulations on CMV safety. Specifically, the Act requires the Secretary to prescribe minimum safety standards to ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely (49 U.S.C. 31136(a)(1)); (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely (49 U.S.C. 31136(a)(2)); (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely (49 U.S.C. 31136(a)(3)); and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)(4)). Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 818, July 6, 2012] added a fifth requirement, *i.e.,* to ensure that ''(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title'' (49 U.S.C. 31136(a)(5)). The 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10)).

This rule implements, in part, the Administrator's authority under section 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The final rule is also based on the broad recordkeeping and implementation authority of section 31133(a)(8) and (10). This rule addresses only CMV equipment and reporting requirements. The provisions of the 1984 Act dealing with the physical condition of drivers therefore do not apply (section 31136(a)(3)–(4)). Finally, as to ensuring that operators of CMVs are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a CMV in violation of a regulation, the rule eliminates only the requirement for drivers (except drivers of passenger-carrying CMVs) to prepare reports when there are no defects or deficiencies; it preserves the rule requiring reports when there are defects or deficiencies, as well as the requirement for motor carriers to take appropriate action on receipt of the report when problems with the vehicle are noted. The removal of the requirement to prepare and retain no-defect DVIRs therefore will not compromise drivers' ability to report vehicle problems to the carrier, or relieve carriers of the responsibility to take action. Furthermore, elimination of the no-defect DVIRs will not compromise drivers' protection under existing whistleblower statutes concerning employers taking adverse action against drivers for refusing to violate the FMCSRs. The rule thus provides protection against coercion of drivers by motor carriers. Finally, because the rule removes a regulatory burden criticized by both drivers and motor carriers (and irrelevant to shippers, receivers, and transportation intermediaries), there is virtually no possibility that a CMV operator will be coerced to violate the rule itself. It is true, of course, that a motor carrier could insist that a driver continue filing no-defect DVIRs even in the absence of a regulatory requirement, but that would be a condition of employment, not coercion to violate a safety regulation.

Discussion of Comments

On August 7, 2013, FMCSA published a notice of proposed rulemaking (NPRM) (78 FR 48125). The Agency proposed to rescind the requirement that CMV drivers, operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, driver-vehicle inspection reports when the driver neither found nor been made aware any vehicle defects or deficiencies.

FMCSA received 41 comments from the following:

- Two governmental agencies: National Transportation Safety Board (NTSB) and Canadian Council of Motor Transport Administrators (CCMTA).

• Six motor carriers: Atlas PyroVision Productions, Con-way Freight, Payne and Dolan, Pyro Spectaculars, RES Specialty Pyrotechnics, and Wald and Company.

• Nine industry associations: American Moving and Storage Association (AMSA), American Pyrotechnics Association (APA), American Truck Dealers Division of the National Automobile Dealers Association (ATD), American Trucking Associations (ATA), California Trucking Association (CTA), National Motor Freight Traffic Association (NMFTA), New England Fuel Institute (NEFI), Petroleum Marketers Association of America (PMAA), and National Strategic Shippers Transportation Council (NASSTRAC).

• Two advocacy organizations: American Association for Justice (AAJ) and Advocates for Highway and Auto Safety (Advocates).

• Two providers of fleet management software: Zonar Systems (Zonar) and J. Hart of Fleettrakker LLC.

• 20 individuals.

Several commenters, including Advocates, ATA, and the NTSB, commented on matters outside the scope of this rulemaking (including hours-of-service regulations, transmittal of driver medical certification information, and brake system and tire inspection procedures).

Con-way Freight pointed out an erroneous reference to § 396.11(b)(2), rather than § 396.11(a)(2). FMCSA published a correction notice in the **Federal Register** on September 6, 2013 (78 FR 54861) to address this error.

Comments Supporting the Proposal

Thirty-one commenters favored FMCSA's proposal. Most pointed to the potential savings in time and paperwork.

APA stated the current DVIR rule ''is an excellent example of an ineffective and excessively burdensome paperwork requirement.'' Four motor carriers stated they supported APA's position on the proposed rule.

Collette Gott, who identified herself as a trucking company safety director, said the proposed rule would encourage motor carriers to shift their focus from mere recordkeeping to CMV safety and maintenance activities and would improve communications between drivers and maintenance shop staff, as well as lead to better recordkeeping. Because she recognized that a requirement to complete a record of an inspection does not guarantee that the inspection gets done, she also maintained that motor carriers will continue to develop and implement oversight procedures.

Zonar, a provider of fleet management systems, supported the proposed rulemaking.

Con-way Freight stated that it supported the proposal in its entirety.

NMFTA stated its support for the proposed rule. NASSTRAC and CTA both supported the proposed rule and asked FMCSA to continue to eliminate or lessen regulations which have costs that outweigh benefits. ATD also supported the proposed rule, stating that a DVIR is one element of an inspection, repair, and maintenance program, and it only makes sense for the driver to prepare and retain formal inspection reports if the driver discovers safety-related defects or deficiencies.

PMAA and NEFI both favored the proposed rule. PMAA wrote ''We applaud the FMCSA for recognizing that keeping non-defect DVIR reports on file does nothing to ensure the safe maintenance of CMVs in interstate commerce. PMAA believes keeping both non-defect DVIRs and defect DVIRs can lead to filing errors that unnecessarily delay repairs on CMVs to the detriment of both operational safety and small motor carriers who are perpetually overburdened by unnecessary paperwork.'' Both PMAA and NEFI also provided detailed responses to the questions FMCSA asked in the NPRM concerning procedures for handling DVIRs.

An individual commenter noted that, in the fuel-hauling business, the large number of rules imposed by Federal, State, and local governments, as well as by fuel transfer facilities (''loading racks'') is confusing to both drivers and motor carriers and leads to errors and reduced safety. In his view, reducing the burden on drivers will be helpful.

ATA supported the proposal, arguing that the current requirement produces a regulatory burden without a safety benefit. However, ATA raised questions concerning FMCSA's computation of the information collection burden. FMCSA addresses those questions below under the heading ''Information Collection Burden Estimates.''

Stephen Carter, a professional driver and private pilot, supported the proposed rule because it would improve his and his carrier's efficiency by eliminating a time- and resource-intensive requirement. He added that it is very much in his and his carrier's interest for him to report equipment defects and for the carrier to remedy them before his CMV is operated. Although he stated that the vast majority of DVIRs submitted currently indicate no defects, he strongly disagreed with the notion, as expressed by some of the opposing comments that drivers would neglect to inspect their CMVs or perform inadequate inspections with the aim of not submitting a DVIR. Mr. Carter added that, as a private pilot, he is bound by Federal Aviation Administration (FAA) regulations—and those regulations require a report only if the pilot finds a safety-related defect in a pre-flight or post-flight inspection.

Twelve other individuals also expressed their support for the proposal. Several of them noted potential savings in time, resources, and paper.

Three commenters—ATD, NTSB, and Zonar—addressed the proposed harmonization of the part 392 pre-inspection and part 396 DVIR lists. All of them supported it.

Comments Opposed to the Proposal: Preference for Retaining Full Reporting Versus Proposed Reporting-By-Exception

AAJ believes that eliminating no-defect DVIRs will dramatically increase truck accidents, injuries, and fatalities. AAJ states that ''Most truck drivers use the daily report as a checklist, much like airline pilots. Thus, eliminating DVIRs will be interpreted by many drivers as eliminating the necessity for a pre-trip inspection.'' AAJ contended that even drivers who understand that an inspection is still necessary ''would not have the report and its list of parts and accessories to use as a checklist.''

An individual, Clay Eppard, characterized the DVIR as a vital line of communication between drivers and mechanics/motor carriers to promote vehicle safety. He noted that drivers often include ''non-safety-related'' defects in their DVIRs, and that some of those defects could affect vehicle safety if they are not addressed in a timely fashion.

AMSA opposed the proposal because it and its members consider the submittal of no-defect DVIRs to be a critical component of preemptive maintenance, and thus an important facet to the general operation of a safe and compliant motor carrier. AMSA and its member companies believe that if FMCSA rescinds the requirement for no-defect DVIRs, drivers could become complacent and this could adversely affect safety and operational practices. AMSA stated that many of its members will continue to require that drivers submit all DVIRs to their respective carriers, regardless of FMCSA's decision.

Similarly, Advocates contended that eliminating the requirement would lead to less attention being paid to vehicle

safety and maintenance, and a higher percentage of vehicle violations and out-of-service (OOS) orders. Advocates asserted that the process of completing the DVIR is a driver's responsibility—and it makes the driver consider the operation of the CMV during the previous trip, including any problems that did not actually disable it. Advocates stated, ''It is inappropriate to allow motor carriers and vehicle maintenance staffs to assume that the failure to complete a report means that no vehicle maintenance or safety issues were encountered.''

The NTSB believes that daily safety inspection is an important component of effective vehicle maintenance, noting that many motor carriers employ inspection checklists. The Board stated that the checklists serve as ''job aids'' for drivers, provide documentation that the driver has completed the daily inspection, and serve as a means of communication between drivers and maintenance workers about vehicle safety issues. The NTSB pointed out that similar inspection reports are required in other transportation modes and in the military, and noted that the use of safety checklists has been shown to improve safety outcomes in many non-transportation settings. The NTSB went on to say that, ''Although the requirement to submit a no-defect DVIR is not a guarantee that drivers will conduct thorough vehicle inspections, the requirement creates a system of accountability that encourages drivers to do so. Without requiring some type of documentation, such as the signature on the DVIR, drivers may be less likely to conduct inspections, and less likely to detect and document vehicle problems.'' The NTSB added that FMCSA requires other types of records to be maintained (hours-of-service records, drug tests, driving records) regardless of whether they indicate compliance or non-compliance. The NTSB also maintained that records preserved by the operator serve as an indicator to regulators that a carrier is following good safety practices.

FMCSA response. The Agency did not propose to change the requirement concerning filing of DVIRs when the driver notes a defect or is made aware of one. FMCSA also did not propose to prohibit motor carriers from continuing to require their drivers to prepare DVIRs, even when the driver has no vehicle defects to report. The fundamental requirement of the FMCSRs is for motor carriers to ensure that their CMVs are in safe and proper operating condition at all times. As the NPRM noted, the Agency attempted to determine, through an analysis of historical inspection and other safety data, whether eliminating the no-defect DVIR would affect the condition and proper maintenance of vehicle components (79 FR 48129). Due to data limitations, mainly the inability to distinguish between form-and-manner violations and serious safety violations, this analysis could not be performed. If anything, the rule may actually improve safety by ensuring that the relatively few DVIRs that report defects are not lost among the vast majority of those that do not, thereby making it easier for motor carriers to identify vehicles in need of repair. Nonetheless, the safety and potential operational implications of drivers *not performing* a post-trip inspection and not reporting CMV equipment defects—and motor carriers not remedying those defects—are as important as when the regulation was promulgated in 1952.

FMCSA does not agree with the contention by several commenters that revising the DVIR requirement as proposed would inevitably lead to drivers paying less attention to vehicle maintenance and safety. The new rule would not change the requirement for CMV drivers to conduct pre- and post-trip vehicle inspections. Nor does it change the requirement for CMV drivers to report defects or deficiencies that were found by or reported to them. No commenters provided data or information to support their predictions of reduced safety.

The Agency also disagrees with Advocates' contention that drivers would not report situations that arose in a previous trip, or Mr. Eppard's comment that drivers would not report ''non-safety related'' defects. The rule does not place a time limit on the driver's ability to report CMV defects. If a driver operates a particular CMV on multiple days, and recalls a potential problem that was not reported the last time he or she drove the CMV, the driver should report the problem to the motor carrier. The rule also does not limit what a driver may report as a safety-related defect.

FMCSA agrees with commenters that completion of a DVIR is an important tool in a motor carrier's systematic inspection, repair, and maintenance program—but disagrees that it is necessary for truck drivers to submit a DVIR when there are no defects to report. The ICC's original 1939 recommendation for use of a ''Driver Trip Report'' and its 1952 ''vehicle condition report by driver'' reflected a preference for a ''continuous record'' of vehicle condition. This type of record would include both the presence and absence of defects. Over the years, however, the notion of a ''continuous record'' has given way among many regulatory agencies to ''reporting by exception''—it is more important and efficient to report anomalies, unusual situations, and real defects or deficiencies that might require maintenance staff to act on them.

One example of this reporting-by-exception model is the FAA's requirement for reporting of anomalies and defects for aircraft. FMCSA reviewed regulations under 14 CFR part 121 applicable to domestic, flag, and supplemental operations (§§ 121.315, 121.563, 121.701, 121.703) and 14 CFR part 135 commuter and on-demand operations (§§ 135.65, 135.415, 135.417) concerning aircraft maintenance logs, reporting of mechanical irregularities, service difficulty reports, and mechanical difficulty summary reports. There is no requirement to file any kind of ''normal operation'' report. The United States Coast Guard (USCG) regulations concerning tests before getting underway (33 CFR 164.25) describe requirements for testing of certain components (primary and secondary steering gear). That same agency's regulations for maintenance, failure, and reporting (33 CFR 164.82) address the requirement for marine radar to be maintained operative, and to file reports in the event of an equipment failure. Neither set of requirements calls for logging detailed results of tests that are performed where no deficiencies are found.

FMCSA disagrees with the AAJ's and other commenters' assertion that ''most drivers'' would reasonably interpret the proposed rule as deleting not only the requirement for a no-defect DVIR, but the need for a pre-trip and post-trip inspection. The same checklist of what could be covered during a driver vehicle inspection would be retained in the FMCSRs. Drivers of all CMVs subject to this rule will continue to be required to file a DVIR if the driver discovers or is made aware of a safety defect or deficiency. FMCSA also did not propose to do away with the pre-trip inspection list in § 392.7(a) or the list of parts and accessories in § 396.11(a). The NPRM merely proposed to make the pre-trip inspection list in § 392.7(a) consistent with that of § 396.11(a).

Role of DVIR in Inspection, Repair, and Maintenance Programs

Comment. Advocates and several other commenters noted that drivers should positively state whether a malfunction was discovered. The NTSB commented that ''the records preserved by a motor carrier serve as an indicator to regulators that a carrier is following

good safety practices.'' Although Advocates supported FMCSA's proposal to continue to require drivers of passenger-carrying CMVs to complete a DVIR even when the driver reports no defects or deficiencies, they pointed out that drivers of freight-transporting CMVs also may have interactions with many people during their work day. The NTSB and two individuals, Mr. Eppard and Frank Gaede, shared this viewpoint.

FMCSA response. The rule retains the requirement for CMV drivers to report defects or deficiencies they become aware of—and this holds for all the vehicles that a driver may operate in any given day.

FMCSA acknowledges that all drivers experience interruptions during their work day that could impact their ability to timely document problems with the vehicle.

The Agency is retaining no-defect DVIRs for passenger-carrying CMVs, as proposed in the NPRM. First, a passenger-carrier crash is a low-probability but high-consequence event, in terms of potential deaths and injuries. Second, motorcoach drivers often need to interact with their passengers, particularly at the beginning and end of their work day, but often during the trip as well. Third, because they are carrying the most valuable cargo, motor carriers of passengers must exercise heightened diligence over their operations, including CMV maintenance. For all of these reasons, FMCSA decided against applying this rule to bus drivers and companies at this time.

Regarding the comment that DVIRs are only one element of an inspection, repair, and maintenance program, FMCSA agrees. The Agency is not foregoing the fundamental requirements of part 393, Parts and Accessories Necessary for Safe Operation. Nor is it proposing to change any other element of the inspection, repair, and maintenance requirements of part 396. Drivers will still be required to perform pre-trip evaluations of equipment condition, and to complete DVIRs if any defects or deficiencies are discovered or reported during the day's operations.

Responding to the NTSB, FMCSA notes that the content and quality of CMV maintenance records often provide a more useful picture of a motor carrier's vehicle safety practices than the sheer quantity of its records. Furthermore, unlike the NTSB, FMCSA by statute must consider benefits and costs to the individuals and entities subject to its regulations. The DVIR is the largest element of the information collection (IC) for part 396 (Office of Management and Budget (OMB) Control No. 2126–0003); the no-defect DVIR for property-carrying CMVs makes up more than 46 million of the 58 million burden hours associated with that collection.

Opposition to Proposal: DVIR as ''Certification''

Comment. Advocates described a DVIR, when used in slip-seat operations, as ''certification from the prior driver . . . that the truck is either ready to go or indicates what is needed to get the CMV ready for operation.''

FMCSA response. A document that reports defects or deficiencies—and how the motor carrier has resolved them—is critical for the next driver. A document that reports no defects or deficiencies is not. Furthermore, the description of a DVIR as a ''certification'' of the state of a CMV is not consistent with the text of the regulation. Under this rule, the absence of a DVIR will serve the same function as the previous no-defect DVIR, *i.e.,* the driver is not aware of any safety defect. This does *not* mean that the next driver should not perform a pre-trip inspection—and it certainly does not indicate that the driver may skip a post-trip inspection that would form the basis for a driver-vehicle inspection report required under § 396.11(a).

Results of Truck and Bus Inspections

Comment. Advocates cited the 20 percent vehicle OOS rate for truck and bus inspections as a key reason for its opposition to the proposed rule. AAJ cited a 27.8 percent vehicle OOS rate for CMVs during traffic stops and a 20.18 percent OOS rate during roadside inspections. Both commenters stated or implied that elimination of no-defect DVIRs would adversely affect those figures. Advocates also argued that the differences cited by FMCSA in the number of fatalities per fatal motorcoach crash (1.57) ''is not significantly different'' from the number of fatalities per fatal truck crash (1.13), and thus not sufficient to justify different rules for trucks and buses.

FMCSA response. The Agency does not believe (1) that any particular vehicle OOS rate is a reason to retain the requirement for no-defect DVIRs, or (2) that the elimination of no-defect DVIRs for property-carrying CMVs will adversely affect the vehicle OOS rate. Furthermore, the Agency believes that the difference between 1.57 fatalities per bus crash and 1.13 fatalities per truck crash is meaningful. And, as noted above, the Agency is taking an appropriately cautious step by retaining the requirement for a no-defect DVIR for passenger-carrying CMVs. FMCSA reiterates the three points made in the NPRM. First, a passenger-carrier crash is a low-probability but high-consequence event, in terms of potential deaths and injuries. Second, motorcoach drivers often need to interact with their passengers, particularly at the beginning and end of their work day, but often during the trip as well. Third, because they are carrying the most valuable cargo, motor carriers of passengers must exercise heightened diligence over their operations, including CMV maintenance. For all of these reasons, FMCSA decided against applying this rule to bus drivers and companies at this time

Safety Statistics

Comment. Advocates cited statistics from FMCSA's Compliance, Safety, Accountability (CSA) program as a basis for recommending that the current DVIR regulation be retained. Advocates stated that the August 2013 Safety Measurement System analyses showed that nearly 30 percent of motor carriers with a Vehicle Maintenance score had scores exceeding an 80 percentile threshold, thus indicating that FMCSA would prioritize these carriers for a safety intervention.

FMCSA Response. FMCSA reviewed the SMS data that Advocates referenced. The Agency agrees that approximately 30 percent of motor carriers with a Vehicle Maintenance score had scores exceeding an 80 percentile threshold, which would likely result in the Agency prioritizing them for an enforcement intervention. However, the Agency is not aware of, and Advocates did not present, any data or information concerning the relationship between the preparation and retention of no-defect DVIRs and carriers' safety performance, as captured in SMS.

Generally, all of the carriers with scores exceeding the 80 percentile threshold are currently subject to the requirement to prepare and retain no-defect DVIRs. These carriers have clearly demonstrated lapses in their safety management controls related to vehicle maintenance and have a pattern of dispatching vehicles that have mechanical problems. These problems may or may not have been known to the driver who prepared the DVIR the day prior to the roadside inspection during which the violations were noted.

FMCSA has no means of determining the percentage of these instances involving previous-day DVIRs where the mechanical problems were noted but not acted upon by the carrier. Likewise, the Agency has no means of determining the percentage where mechanical problems were present but not reported. Therefore, the maintenance scores in SMS do not

provide useful information for determining what actions these carriers would take in the absence of the no-defect DVIR requirement. And, this information does not mean that carriers with SMS scores below the enforcement intervention threshold would lessen their vehicle maintenance efforts upon rescission of the requirement to prepare and maintain no-defect DVIRs.

FMCSA believes it is important to note that nothing in this rulemaking relieves drivers of the responsibility to prepare DVIRs for any vehicle for which a defect or deficiency has been observed by or reported to the driver. Motor carriers remain responsible for reviewing those DVIRs and taking appropriate action to either fix the problem or document that no repairs were made because the carrier determined that the problem did not relate to the safe operation of the vehicle. The Agency will continue to use SMS to identify carriers with poor maintenance programs.

Information Collection Burden Estimates

Comments. NMFTA stated that it concurs with FMCSA's analyses, including the Agency's conservative estimate of the reductions in time and cost burdens from eliminating no-defect DVIRs. However, several commenters questioned FMCSA's estimates of reductions in the costs associated with completing and filing DVIRs. Advocates asserted that FMCSA has neither performed a study on the potential outcomes, nor considered costs to society, from the proposed rule—and Advocates believes the change would lead to unintended and negative consequences from some CMV drivers who ''may choose to forego completing a defect DVIR.'' Advocates also believes that the estimated time savings for a driver to complete, and for a motor carrier to review and file, a DVIR is so small ''there is little or no practical utility for the individual driver or the industry as a whole'' resulting from the proposed requirement.

FMCSA response. The Agency did not propose to prohibit motor carriers from continuing to require their drivers to prepare DVIRs even when the driver has no vehicle defects to report. We have complied with the Paperwork Reduction Act (PRA) requirements and routinely published 60- and 30-day notices concerning the estimates used for this information collection burden. If interested parties have accepted these estimates during the multiple notice-and-comment proceedings concerning the renewal of the OMB approval for part 396, it is only appropriate that the Agency use those same estimates for the rulemaking. Through this notice-and-comment rulemaking, we are eliminating a costly portion of an information collection requirement without adversely impacting safety. As for the allegedly de minimis effect of the rule, the PRA calls for the Agency to estimate not only the time and resource requirements associated with filing of a given item of information, but also the aggregate annual total of such filings. In the case of the DVIR, FMCSA estimates that the form is completed an average of 250 days per year for each of the more than 4.58 million CMVs in operation. So, although the requirements imposed on an individual on a daily basis may be low, the aggregate total is very large.

Comment. An individual commenter, Robert Irwin, believes FMCSA should no longer require no-defect DVIRs for passenger CMVs, given that it takes the same amount of time to prepare a DVIR for a bus as for a truck.

FMCSA response. The Agency believes that significant reporting changes in the passenger-carrying CMV segment should *not* be made at this time, for the reasons given above.

Comment. Zonar questioned FMCSA's time and cost estimates, noting that the inspections themselves would still be required and asserting that the drivers' ''paperwork'' time is minimal. John Hart, representing Fleettrakker LLC, a provider of fleet management software, asked FMCSA to reconsider its proposal in light of the availability of electronic DVIR applications that would provide comprehensive records of daily CMV inspections while eliminating cumbersome paper records. Mr. Hart said the daily inspection was based on a faulty assumption.

FMCSA response. The PRA estimates focus on recordkeeping and record-retention, not on the performance of the inspection, which is considered part of a normal business practice. The Agency estimates include the actions of preparing, submitting, reviewing, and filing records—and, even if the records were handled electronically, there would still be an information-collection burden associated with them.

Processes: Paper Versus Electronic DVIRs

Comment. Mr. Hart of Fleettrakker LLC argued there is an inconsistency between FMCSA's support of integrated electronic wireless technologies and its policy to allow the use of electronic signatures for DVIRs, and that this calls into question the accuracy of FMCSA's analyses of paper-based DVIR reports. He also claimed that the use of paper DVIRs is not an effective tool to improve CMV safety, and that FMCSA should require the use of electronic applications to perform this function. Zonar asked FMCSA to strengthen its policy concerning use of electronic documents and systems, such as the DVIR application included in its own products. Gregory Hooyman of Payne and Dolan noted that vehicle monitoring systems can communicate with the safety and maintenance departments from the road to advise them of problems so they can be ready to repair the vehicle when it returns, rather than having to wait until the trip is over and the driver submits a paper DVIR.

FMCSA response. FMCSA does not prohibit motor carriers from using information technology in their CMV maintenance activities. FMCSA also will allow motor carriers to continue to require drivers to submit no-defect DVIRs if they believe that doing so is appropriate for their operations. However, the NPRM did not propose to require motor carriers to use electronic DVIRs in place of paper DVIRs.

FMCSA recognizes that CMV operations and maintenance marketplaces are served by a large and constantly increasing number of system providers. FMCSA's policy since the early 1990s has been to encourage motor carriers to use electronic methods for a wide range of information collection and recordkeeping purposes. In fact, one of the first requests from motor carriers to be allowed to utilize electronic document handling concerned DVIRs. FMCSA's January 2011 Regulatory Guidance Concerning Electronic Signatures and Documents (76 FR 411, January 4, 2011) continues and extends the Agency's support of paperless recordkeeping systems.

Comment. The NTSB noted that many motor carriers use DVIR checklists that are integrated with driver record of duty status (logbook) forms, or use electronic DVIRs. The NTSB believes that, unless drivers elect not to complete inspections, the amount of additional time spent to complete a no-defect DVIR is negligible.

FMCSA response. FMCSA has long allowed motor carriers the option of using the back of the record of duty status (daily log) as the DVIR, provided the motor carrier complies with the record retention requirements in § 395.8 and § 395.11 (see Regulatory Guidance for § 396.11, Question 15, 62 FR 16370, at 16428). Motor carriers may still use these forms and checklists. FMCSA has encouraged the use of electronic recordkeeping for DVIRs since the early 1990s. However, it still takes time for a driver to complete and submit a DVIR, and for a motor carrier to review it and

to file it, whether it is prepared electronically or on paper. FMCSA anticipates that the proportion of DVIRs completed electronically will steadily increase.

Comment. The NTSB does not believe that maintenance personnel would overlook DVIRs indicating defects. In describing how a motor carrier might use DVIRs, the NTSB indicated that no-defect DVIRs are typically not given to maintenance personnel, but are delivered to a separate location. DVIRs noting defects are typically used to initiate work orders.

FMCSA response. FMCSA disagrees with the NTSB's description of the process for handling DVIRs. Drivers required to use paper forms generally submit all of their documents in a trip envelope, and someone sorts them out and forwards them to the appropriate staff or offices. All vehicle-related documents, except for fuel purchases, would generally be forwarded to the maintenance department. Only at that point would the DVIRs that note vehicle defects or deficiencies be sorted and assigned for action.

Comment. AAJ stated that it is sympathetic to the need to reduce paperwork and costs and suggested that, rather than eliminate no-defect DVIRs altogether, FMCSA could reduce costs to motor carriers if the daily inspection report were to be included in a weekly format. According to AAJ, this would continue to ensure that daily inspections were performed and reduce the volume of paper records needing to be maintained.

FMCSA response. There are several potential drawbacks to this suggestion. In a June 1998 final rule, the Agency revised the part 396 requirements [63 FR 33254, June 18, 1998, at 33279] to acknowledge the growing use of centralized maintenance recordkeeping systems and to eliminate the requirement that the previous day's DVIR be physically carried in the CMV. Because drivers often do not operate the same CMV every day, a multiday form would probably need to be tracked to follow a given CMV. Thus, the AAJ's suggestion appears to recommend returning to the pre-1998 rule. It is also unclear what would happen to the weekly report if a driver discovered a mechanical problem on the third day of the week, for example, and submitted the defect report (on the weekly form) to the maintenance shop.

Comment. ATA believes that FMCSA has overstated the potential benefits associated with eliminating the no-defect DVIR. ATA estimates that about 40 percent of the 600,000–800,000 electronic on-board recorders [1] in use include an electronic-DVIR function. ATA also believes that FMCSA has over-estimated the amount of time needed to complete the paperwork for a no-defect DVIR: As ATA views it, 47.2 million hours, divided by 500,000 fleets, equals approximately 95 hours per fleet per year. ATA also believes that many motor carriers will continue to maintain no-defect DVIRs in order to provide continuity to their maintenance programs and because of concerns over litigation. ATA surveyed the motor carrier members of its Technology & Maintenance Council and received responses from 59 carriers. Although nearly three-fourths (70.2 percent) of them supported rescinding the regulatory requirement, there was nearly an even division among the carriers that said they would continue to retain no-defect DVIRs, those that would no longer retain them, and those that were uncertain. Among the 13 carriers providing individual comments to the survey, opinions were divided. Although most expressed support for the proposal, others expressed concerns similar to those of Advocates, that drivers might not complete DVIRs to report defects [even though this will still be required]. Of the 37 carriers responding to a question concerning costs of submitting and retaining no-defect DVIRs, 16 stated that they were unable to provide estimates or that the costs were minimal, although one carrier estimated a cost of $25,000 per truck per year.

FMCSA response. Rather than estimating information-collection burdens on a per-fleet basis, as ATA did, FMCSA calculated its time estimate on a per-vehicle basis (approximately 11 hours). Because there is enormous variation in fleet sizes, and because approximately 152,000 single-CMV fleets are not required to prepare or retain DVIRs, FMCSA believes that it is more appropriate to estimate information collection burdens on a per-vehicle basis, and to express them as industry-wide totals rather than per-fleet totals. In addition, it appears that ATA might not have accounted for the motor carriers that operate only a single CMV and are not required to prepare DVIRs, so might have under-estimated the reduction in information-collection burden.

Concerning the proportion of DVIRs prepared electronically, FMCSA received no comments on its estimated information collection burden for inspection, repair, and maintenance recordkeeping requirements the last several times this collection has come up for renewal. FMCSA's current estimate that 5 percent of DVIRs are completed electronically (5% × 4,578,250 CMVs), is somewhat less than the ATA's estimate (40% of between 600,000 and 800,000 CMVs so equipped = 240,000 to 280,000 CMVs using electronic DVIRs).

[1] The term ''electronic on-board recorder'' is understood in this context to include multiple functions, not limited to recording driver hours-of service.

Applicability to Intrastate Operations

Comment. Gregory Hooyman, who supported the proposal, also asked FMCSA to make it applicable to intrastate drivers in order to avoid potential confusion.

FMCSA response. In order to be eligible for Motor Carrier Safety Assistance Program (MCSAP) grants, States must adopt and enforce motor carrier safety laws and regulations for intrastate as well as interstate operations that are compatible with the FMCSRs, including parts 392 and 396 (49 CFR 350.201(a)). MCSAP recipients have up to 3 years to adopt the requirements of this final rule.

Comment Concerning U.S.-Canada Reciprocity

Comment. The CCMTA noted that, in accordance with the Canada-U.S. Trip Inspection Reciprocity Agreement, ''CCMTA jurisdictions will accept the pre- and post-trip inspection reports prepared by U.S. base-plated motor carriers in accordance with 49 CFR part 396 as fully compliant with the requirements of NSC [National Safety Code] Standard 13 on Trip Inspection dated September 2008 provided such motor carriers carry, and produce upon demand, a post-trip inspection report that is no more than 24-hours old. If a driver does not have access to the vehicle's previous post-trip inspection report, the driver will prepare and produce the report required by 49 CFR 396.11 for the purpose of the Canadian operations.'' CCMTA stated that the proposed change to the FMCSRs would require amending the Reciprocity Agreement, to state that U.S. domiciled drivers will continue to be required to produce a DVIR at roadside when operating in Canada even when no defect has been detected. CCMTA provided a copy of a May 14, 2009, letter on this matter.

FMCSA response. Motor carriers operating in Canada will need to comply with Canadian national, Provincial and Territorial requirements that require the previous post-trip DVIR. Drivers will need to prepare and to carry a copy of their previous day's post-trip

DVIR, regardless of whether there are defects to report.

Section-by-Section Analysis

This final rule adopts the NPRM as proposed with minor revisions for clarity.

In § 392.7, FMCSA adds ''wheels and rims'' and ''emergency equipment'' to the pre-trip list in paragraph (a) in order to harmonize it with the post-trip list in § 396.11(a)(1). Additionally, FMCSA amends 49 CFR part 396 by deleting the sentence in § 396.11(a)(2) that reads ''If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate.'' In its place, FMCSA inserts ''The driver of a passenger-carrying CMV must prepare and submit a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare or submit a report if no defect or deficiency is discovered by or reported to the driver.'' FMCSA also makes minor editorial and formatting changes to the remainder of the text of § 396.11(a)(2).

The Agency makes a technical change to § 396.11 to eliminate redundant language. In the final rule of June 12, 2012 (77 FR 34852), the text of § 396.11(c) was moved to § 396.11(a)(3) and the text of § 396.11(d) was moved to § 396.11(a)(5). However, the amendatory text to delete paragraphs (c) and (d) was not included in that final rule. The Agency corrects that omission here.

Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review) as Supplemented by E.O. 13563 and DOT Regulatory Policies and Procedures

Under E.O. 12866, ''Regulatory Planning and Review'' (issued September 30, 1993, published October 4 at 58 FR 51735), as supplemented by E.O. 13563 (discussed above in the ''Background'' section), and DOT policies and procedures, FMCSA must determine whether a regulatory action is ''significant'' and therefore subject to OMB review. E.O. 12866 defines ''significant regulatory action'' as one likely to result in a rule that may:

(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 government 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.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA has determined that this rule does have an annual effect of $100 million or more. The value of the time saved by eliminating the paperwork burden associated with the filing of no-defect DVIRs is approximately $1.7 billion per year. The explanation of how these savings were estimated is presented below. The rule is not expected to have any negative safety impacts.

The Agency conducted an analysis pursuant to the Paperwork Reduction Act (PRA) to estimate the reduction in hourly burden from elimination of DVIRs for non-passenger-carrying operators of CMVs. FMCSA determined that 46.7 million hours of paperwork burden would be eliminated by this rule. The full details of the PRA analysis are included in the ''Paperwork Reduction Act'' section below. Using a labor cost of $37 per hour (with a base wage of $18.61,[2] fringe benefits of 57 percent,[3] and overhead of 27 percent; [4] $18.61 × 1.57 × 1.27 = $37), the Agency valued this time savings at $1.7 billion per year (46.7 million hours saved × $37 per hour).

The Agency added ''wheels and rims'' and ''emergency equipment'' to the items required to be inspected under § 392.7 to make the lists in this section and § 396.11 consistent. The addition of these two items to § 392.7 is expected to impose a de minimis additional burden on drivers performing pre-trip evaluations of equipment, as drivers will be able readily to observe whether these newly added items are in good working order during their review of the items currently in the § 392.7 list (service brakes, including trailer brake connections, parking (hand) brake, steering mechanism, lighting devices and reflectors, tires, horn, windshield wiper or wipers, rear-vision mirror or mirrors, and coupling devices). For example, a driver making a visual examination of tires can hardly avoid examining the wheels and rims at the same time, and defects on these components are usually fairly obvious. Similarly, while getting into the cab to check the steering mechanism and horn, he or she can easily glance at the dial gauge on the fire extinguisher to determine that it is still fully charged. Other emergency equipment, including warning triangles, flares, or fuses are usually stored in an easy-to-reach location (often under or behind the driver's seat) and are readily checked. These items were added to the inspection list for consistency, and the Agency expects the cost and benefits of these additions to be de minimis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of a regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000.[5]

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies try to minimize any adverse effects on these entities. Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), the rule will have a significant economic impact on a substantial number of small entities in the form of cost savings through the elimination of 46.7 million paperwork burden hours. These firms would receive regulatory relief of approximately $3,000 per entity, which is a positive benefit and does not impose a cost on the regulated entities. See 5 U.S.C. 605(b).

[2] The median hourly wage for heavy truck drivers. See *http://www.bls.gov/oes/current/oes533032.htm.* Accessed April 18, 2014.

[3] The ratio of total fringe benefits to wages and salaries for transportation and warehousing workers. See *http://www.bls.gov/news.release/archives/ecec_03122014.pdf.* Table 10, Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, March 12, 2014. Transportation and Warehousing. *http://www.bls.gov/news.release/pdf/ecec.pdf.* Accessed April 18, 2014.

[4] Industry data gathered for the Truck Costing Model developed by the Upper Great Plains Transportation Institute Berwick showed an average cost of $0.107 per mile of CMV operation for management and overhead, and $0.39 per mile for labor, indicating an overhead rate of 27 percent ($0.107 ÷ $0.39). See Farooq. ''Truck Costing Model for Transportation Managers''. Upper Great Plains Transportation Institute, North Dakota State University (2003) accessed on April 18, 2014 at *http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf.* See Appendix A, pp. 42–47. Overhead is applied to the base wage and fringe benefits.

[5] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), see National Archives at *http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html.*

Regulatory Flexibility Analysis (RFA)

(1) A Description of the Reason Why Action by the Agency Is Being Considered

FMCSA rescinds the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, driver-vehicle inspection reports (DVIR) when the driver has neither found nor been made aware of any vehicle defects or deficiencies (no-defect DVIR). This rule removes a significant information collection burden without adversely impacting safety. This rule responds, in part, to the President's January 2011 Regulatory Review and Reform initiative. Finally, this rule harmonizes the pre- and post-trip inspection lists.

(2) A Succinct Statement of the Objectives of, and Legal Basis Why Action by the Agency Is Being Considered

This final rule grants regulatory relief to motor carriers and drivers of all sizes of vehicles currently subject to 49 CFR 396.11, both private and for-hire, with the exception of operators of passenger-carrying CMVs. This rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) [49 U.S.C. 31502(b)] and the Motor Carrier Safety Act of 1984 (1984 Act) [49 U.S.C. 31136(a)], both of which are broadly discretionary. The rule implements, to some extent, the Administrator's authority under section 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The NPRM is also based on the broad recordkeeping and implementation authority of section 31133(a)(8) and (10). The removal of the obligation to prepare and retain no-defect DVIRs does not compromise drivers' ability to report vehicle problems to the carrier, or relieve carriers of the responsibility to take corrective action.

(3) A Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Rule Applies

The motor carriers regulated by FMCSA operate in many different industries, and no single ''small business'' size threshold used by the Small Business Administration (SBA) is applicable to all motor carriers. Most for-hire property carriers operate under North American Industrial Classification System [6] (NAICS) code 484, truck transportation (see, *http://www.bls.gov/iag/tgs/iag484.htm*), although some for-hire carriers categorize themselves as ''express delivery services'' (NAICS 492110), ''local delivery'' (NAICS 492210), or operate primarily in other modes of freight transportation. The SBA size standard for ''small'' truck transportation and local delivery services is currently $25.5 million or less in revenue per year, and 1,500 or fewer employees for express delivery services. For other firms in other modes that may also be registered as for-hire motor carriers, the ''small'' size standard is 500 or 1,500 employees.[7]

This rulemaking would also affect private motor carriers. These carriers use CMVs they own or lease to ship their own goods (such as a motor carrier that is operated by a retail department store chain to distribute goods from its warehouses to its store locations) or in other regulated transportation activities related to their primary business activities (for example, dump trucks used by construction companies). FMCSA does not have NAICS codes for private motor carriers and therefore cannot determine the appropriate size standard to use for each case. The ''small'' size standards vary widely, from $0.75 million for many types of farms, to $33.5 million for building construction firms.

For for-hire motor carriers, FMCSA examined data from the 2007 Economic Census [8] to determine the percentage of firms that have revenue at or below SBA's thresholds. Although boundaries for the revenue categories used in the Economic Census do not exactly coincide with the SBA thresholds, FMCSA was able to make reasonable estimates using these data. According to the Economic Census, about 99 percent of trucking firms had annual revenue less than $25 million; the Agency concluded that the percentage would be approximately the same using the SBA threshold of $25.5 million as the boundary.

For private carriers, the Agency assumed that private carriers with fewer CMVs than the top 1 percent (ranked by total CMVs) of for-hire carriers would also be small. That is, any company maintaining a CMV fleet the size of that of a large for-hire carrier would be considered large within its own industry. The Agency found that the top 1 percent of for-hire carriers had at least 194 CMVs. Using this threshold, FMCSA identified 201,725 small private property carriers (99.4 percent of this group) with fewer than 194 CMVs. This could overestimate the number of small, private carriers. However, the Agency is confident that no small private carrier would be excluded.

The table below shows the complete estimates of the number of small carriers. All told, FMCSA estimates that 99.1 percent of regulated motor carriers are small businesses according to SBA size standards.

[6] More information about NAICS is available at: *http://www.census.gov/eos/www/naics/.*, Accessed Feb. 4, 2014.

[7] U.S. Small Business Administration Table of small Business Size Standards matched to North American Industry Classification System (NAICS) codes, effective January 1, 2012. See *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[8] U.S. Census Bureau, ''2007 Economic Census.'' Accessed December 18, 2013 at: *http://www.census.gov/econ/census07/.*

TABLE 3—ESTIMATES OF NUMBERS OF SMALL ENTITIES

	For-hire general freight	For-hire specialized freight	Private property	Total
Carriers	176,000	139,000	203,000	518,000
Percentage of Small Carriers	98.9%	98.9%	99.4%	99.1%
Number of Small Carriers*	174,064	137,471	201,725	513,260

* Number of carriers does not exactly equal percentages due to rounding.

(4) A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Would Be Subject To Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

This rule reduces costs on small entities by eliminating a substantial paperwork filing burden. The reduction in this burden is estimated to save the industry 46.7 million hours of driver time with associated monetized savings of $1.7 billion, as explained in the Paperwork Reduction Act section. These benefits will accrue primarily to small carriers that make up the majority of firms and employ the majority of drivers in the industry. The skills for drivers to complete DVIRs are basic reading and writing proficiency skills.

(5) Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Rule

This rule does not duplicate, overlap, or conflict with any other Federal rules.

(6) A Description of Any Significant Alternatives to the Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rule on Small Entities

The Agency has concluded that there are no significant alternatives to the rule that would achieve either the value of $1.7 billion in time savings or other objectives of this final rule, except eliminating the paperwork burden. Because small businesses are such a considerable part of the demographic the Agency regulates, providing alternatives to small businesses for non-compliance options is neither feasible nor consistent with public safety.

Assistance for Small Entities

Pursuant to section 213 of SBREFA, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on them. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mike Huntley listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $151 million (which was the value of $100 million in 2013 after adjusting for inflation) or more in any 1 year. Although this rule does not result in such expenditure, FMCSA discusses the effects of this rule elsewhere in this preamble.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under its environmental procedures Order 5610.1, published February 24, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(aa) of Appendix 2. The Categorical Exclusion under paragraph 6(aa) relates to regulations requiring motor carriers, drivers, and others to ''inspect, repair, and provide maintenance for every CMV used on a public road'', which is the focus of this rulemaking. A Categorical Exclusion determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. No additional contributions to air emissions are expected from this rule and FMCSA expects the rule to not be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Executive Order 12898 Environmental Justice

FMCSA evaluated the environmental effects of this proposed rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires FMCSA to consider the impact of paperwork and other information collection burdens imposed on the public. This rule reduces the burden hours for the ''Inspection, Repair, and Maintenance'' information collection request (ICR), OMB control number 2126–0003. This ICR comprises six individual information collections, each corresponding to a different area of the inspection, repair, and maintenance requirements. This rule affects only the DVIR section of this ICR.

Based on data from its Motor Carrier Management Information System (MCMIS) and Licensing and Insurance

System (L&I), FMCSA estimates that there are approximately 4,117,000 CMVs being operated that are subject to these requirements, which includes 1,845,000 tractors and 101,000 passenger-carrying CMVs, but excludes the 152,000 CMVs of single-vehicle owner operators. Consistent with past analyses of this ICR, the Agency assumes that these CMVs are used on average 65 percent of the days of a year, and that 25 percent of tractor-trailer drivers operate two vehicle combinations per day, which effectively increases the number of CMVs or CMV combinations requiring a DVIR by 461,250 (25 percent × 1,845,000 tractors) to a total of 4,578,250 (4,117,000 CMVs + 461,250 additional tractor-trailer combinations). Applying the 65 percent utilization rate yields an annual estimate of 1,086,189,813 DVIRs (4,578,250 CMVs or CMV combinations × 65 percent × 365 days per year).

FMCSA has parsed the DVIR process into two steps. The first step, filling out a DVIR is estimated to take 2 minutes, 30 seconds. The second step, reviewing and signing a DVIR is estimated to take 20 seconds when defects are reported and 5 seconds when no defects are reported. When there are no defects to note, there is nothing to review on the DVIR, and the form requires only a signature. The Agency estimates that 5 percent of DVIRs note defects, and that 95 percent of DVIRs note no defects.

When this rule goes into effect, 93 percent of the burden associated with DVIRs will be eliminated. The remaining burden would be associated with DVIRs that note defects and no-defect DVIRs for passenger-carrying CMVs. The annual burden remaining from these two activities is 2,564,615 hours and 980,123 hours respectively. The table below illustrates how these results were calculated.

TABLE 4—DETAIL OF DVIR PRA CALCULATIONS

Activity	Number of CMVs or CMV combinations	Utilization rate (of 365 calendar days) (percent)	Percent of CMVs affected	Total DVIRs (CMVs × utilization rate × percent of CMVs affected × 365)	Burden per DVIR (seconds)	Total Annual hourly burden
Defect DVIRs, All	4,578,250	65	5	54,309,491	170	2,564,615
No Defect DVIRS, passenger-carrying CMVs	101,000	65	95	22,764,138	155	980,123
Total						3,544,738

Defect DVIRs create 2,564,615 hours of annual burden (4,578,250 CMVs × 65% utilization × 365 days × 5% of CMVs × 170 seconds ÷ 3,600 seconds per hour). The annual hourly burden of no defect DVIRs for passenger carrying CMVs is estimated to be 980,123 hours (101,000 CMVs × 65% utilization × 365 days × 95% of CMVs × 155 seconds ÷ 3,600 seconds per hour). The total remaining hourly burden of DVIRs is 3,544,738 hours. This new total represents a reduction of 46,669,294 hours compared to the 50,214,032 hours of annual burden estimated in the currently approved ICR. The monetary value of this annual burden reduction, calculated using an hourly labor cost of $37, is $1.7 billion (46,669,294 hours × $37 per hour).

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an Agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects on children. FMCSA has determined that this rule is not a covered regulatory action as defined under Executive Order 13045. This determination is based on the fact that this proposal would not constitute an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 13132 (Federalism)

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

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this rule under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This final rule is not a significant energy action within the meaning of section 4(b) of the Executive Order. This final rule is a procedural action, is not economically significant, and does not have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Impact Analysis

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the rule on the privacy of information in an identifiable form and related matters. FMCSA has determined

this rule would have no privacy impacts.

List of Subjects

49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA amends title 49 CFR, Code of Federal Regulations, chapter III, to read as follows:

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 1. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405–805 (2012); and 49 CFR 1.87.

■ 2. Revise § 392.7(a) to read as follows:

§ 392.7 Equipment, inspection and use.

(a) No commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order, nor shall any driver fail to use or make use of such parts and accessories when and as needed:

Service brakes, including trailer brake connections.
Parking (hand) brake.
Steering mechanism.
Lighting devices and reflectors.
Tires.
Horn.
Windshield wiper or wipers.
Rear-vision mirror or mirrors.
Coupling devices.
Wheels and rims.
Emergency equipment.

* * * * *

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 3. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 4. Amend § 396.11 as follows:

■ a. Remove paragraphs (c) and (d); and

■ b. Revise paragraph (a)(2) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(2) *Report content.* (i) The report must identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If a driver operates more than one vehicle during the day, a report must be prepared for each vehicle operated. The driver of a passenger-carrying CMV subject to this regulation must prepare and submit a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare or submit a report if no defect or deficiency is discovered by or reported to the driver.

(ii) The driver must sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified.

* * * * *

Dated: December 9, 2014.

Anthony R. Foxx,

Secretary.

[FR Doc. 2014–29331 Filed 12–17–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130123065–4999–02]

RIN 0648–BC95

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 18 to the Salmon Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 18 to the Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP). Amendment 18 revises the description and identification of essential fish habitat (EFH) for Pacific salmon managed under the FMP, designates habitat areas of particular concern (HAPCs), updates information on fishing activities, and updates the list of non-fishing related activities that may adversely affect EFH and potential conservation and enhancement measures to minimize those effects. NMFS approved Amendment 18 on September 12, 2014.

DATES: This final rule is effective January 20, 2015.

ADDRESSES: This final rule is accessible on the Web site of NMFS' West Coast Region (*http://www.westcoast.fisheries.noaa.gov*). The current FMP, through Amendment 18, is available on the Pacific Fishery Management Council's Web site (*http://www.pcouncil.org/*).

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

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) developed Amendment 18 in compliance with the MSA's requirement to periodically review EFH provisions, and to revise or amend those provisions, as warranted, based on available information (50 CFR 600.815(a)(10)). The Council took final action on Amendment 18 in September 2013 and transmitted the amendment to NMFS on June 10, 2014. Alternatives considered in the development of Amendment 18 were analyzed in a draft Environmental Assessment (EA). NMFS published a notice of availability of Amendment 18 in the **Federal Register** (79 FR 34272, June 16, 2014) to notify the public of the availability of the amendment and draft EA, and invite comments. NMFS published a proposed rule in the **Federal Register** (79 FR 56547, September 22, 2014) to notify the public and invite comments. NMFS received no comments in response to either the notice of availability or the proposed rule.

Amendment 18 revises the description and identification of EFH for Pacific salmon managed under the FMP, designates HAPCs, updates the current information on fishing activities, and updates the list of non-fishing related activities that may adversely affect EFH and potential conservation and enhancement measures to minimize those effects. The details of Amendment 18 were described in the proposed rule (79 FR 56547, September 22, 2014) and are not repeated here. This final rule identifies changes to the regulations under 50 CFR 660 subpart H to implement Amendment 18 and describes changes made from the proposed rule.

Response to Comments

NMFS received no comments on the proposed rule. The Department of the Interior submitted a letter stating that they had no comments.

Changes From Proposed Rule

This final rule includes changes to the existing regulations at 50 CFR 660.412 to implement Amendment 18. These are largely unchanged from the proposed rule; those that have changed from the proposed rule are described below.

Table 1 to Subpart H of Part 660

Three table cells that were inadvertently left blank in the proposed rule have been corrected to identify EFH designations in hydrologic units 17100207, 17110012, and 17110016.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 18, the Pacific Salmon Fishery Management Plan, the MSA, and other applicable law.

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

An EA has been prepared for Amendment 18; a copy of the EA is available online at *http://www.pcouncil.org/*. The EA includes a regulatory impact review (RIR) prepared by NMFS.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, at the proposed rule stage, that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on this certification, and no new information has been received concerning the economic impact of this rule. As a result, no Final Regulatory Flexibility Analysis is required, and none has been prepared. NMFS will conduct the appropriate analyses for any subsequent rulemakings stemming from this final rule.

This final rule would not establish any new reporting or recordkeeping requirements. This final rule does not include a collection of information. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

This action is not expected to have adverse effects on any ESA-listed species or critical habitat. As described in the EA for Amendment 18, this action may have minimal effects on ESA-listed species in freshwater areas where EFH designations would change slightly under the preferred alternative. NMFS has consulted with itself under ESA section 7 and prepared a memo concluding that implementation of the preferred alternative is not likely to adversely affect any listed species or critical habitat.

This final rule was developed after meaningful collaboration with the affected tribes, through the PFMC process. Under the MSA at 16 U.S.C. 1852(b)(5), one of the voting members of the PFMC must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the PFMC's jurisdiction.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 11, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. *et seq.* and 16 U.S.C. 773 *et seq.*

■ 2. Section 660.412 is revised to read as follows:

§ 660.412 EFH identifications and descriptions for Pacific salmon.

Essential fish habitat (EFH) is identified for anadromous Pacific salmon stocks managed by the Pacific Fishery Management Council (PFMC) under the Pacific Coast Salmon Fishery Management Plan (FMP). These managed salmon include most of the Chinook salmon (*Oncorhynchus tshawytscha*) stocks and all of the coho salmon (*O. kisutch*) stocks from Washington, Oregon, Idaho, and California; as well as pink salmon (*O. gorbuscha*) stocks originating from watersheds within Puget Sound east of, and including, the Elwha River. The geographic extent of freshwater EFH is specifically identified in the FMP as all water bodies currently or historically occupied by PFMC-managed salmon in Washington, Oregon, Idaho, and California; including aquatic areas above all artificial barriers that are not specifically excluded. Freshwater EFH, identified in Table 1 of this subpart H, is described using fourth field hydrologic unit codes developed by the U.S. Geological Survey (defined in U.S. Geological Survey and U.S. Department of Agriculture, Natural Resources Conservation Service: Federal guidelines, requirements, and procedures for the national Watershed Boundary Dataset: U.S. Geological Survey Techniques and Methods 11–A3, 2009). Table 1 also identifies the dams that represent the upstream extent of EFH in each hydrologic unit.

(a) Chinook salmon EFH includes all water bodies currently or historically occupied by PFMC-managed Chinook salmon in Washington, Oregon, Idaho, and California as identified in Table 1 of this subpart. Chinook salmon EFH also includes the estuarine and marine areas extending from the extreme high tide line in nearshore and tidal submerged environments within state territorial waters out to the full extent of the exclusive economic zone (EEZ) (200 nautical miles) offshore of Washington, Oregon, and California north of Point Conception; and the marine areas of Alaska that are designated as Chinook salmon EFH by the North Pacific Fishery Management Council (NPFMC), for stocks that are also managed by the PFMC.

(b) Coho salmon EFH includes all water bodies currently or historically occupied by PFMC-managed coho salmon in Washington, Oregon, Idaho, and California as identified in Table 1 of this subpart. Coho salmon EFH also includes the estuarine and marine areas extending from the extreme high tide line in nearshore and tidal submerged environments within state territorial waters out to the full extent of the EEZ (200 nautical miles) offshore of Washington, Oregon, and California north of Point Conception; and the marine areas of Alaska that are designated as coho salmon EFH by the NPFMC, for stocks that are also managed by the PFMC.

(c) Puget Sound pink salmon EFH includes all water bodies currently or historically occupied by PFMC-managed Puget Sound pink salmon in Washington State as identified in Table 1 of this subpart. Puget Sound pink salmon EFH also includes the estuarine and marine areas extending from the extreme high tide line in nearshore and tidal submerged environments within state territorial waters north and east of Cape Flattery, Washington, including Puget Sound, the Strait of Juan de Fuca and Strait of Georgia; the waters of the U.S. EEZ north of 48° N latitude to the U.S.-Canada border; and marine areas of Alaska that are designated as pink salmon EFH by the NPFMC, for stocks that are also managed by the PFMC.

■ 3. Table 1 to Subpart H of Part 600 is revised to read as follows:

TABLE 1 TO SUBPART H OF PART 660—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)

4th Field hydrologic unit code	Hydrologic unit name	State(s)	Chinook salmon	Coho salmon	Puget Sound pink salmon	Impassable dam(s)
17020005	Chief Joseph	WA	X	X		Chief Joseph Dam.
17020006	Okanogan	WA	X			n/a.
17020007	Similkameen	WA	X			n/a.
17020008	Methow	WA	X	X		n/a.
17020009	Lake Chelan	WA	X			n/a.
17020010	Upper Columbia-Entiat	WA	X	X		n/a.
17020011	Wenatchee	WA	X	X		n/a.
17020012	Moses Coulee	WA	X	X		n/a.
17020015	Lower Crab	WA	X			n/a.
17020016	Upper Columbia-Priest Rapids.	WA	X	X		n/a.
17030001	Upper Yakima	WA	X	X		Keechelus Dam Kachess Dam (Kachess River).
17030002	Naches	WA	X	X		Rimrock Dam (Tieton River).
17030003	Lower Yakima	WA	X	X		n/a.
17060101	Hells Canyon	OR/ID	X			Hells Canyon Dam.
17060102	Imnaha River	OR/ID	X			n/a.
17060103	Lower Snake-Asotin	OR/WA/ID	X	X		n/a.
17060104	Upper Grande Ronde River.	OR	X	X		n/a.
17060105	Wallowa River	OR	X	X		n/a.
17060106	Lower Grande Ronde	OR/WA	X	X		n/a.
17060107	Lower Snake-Tucannon	WA	X	X		n/a.
17060108	Palouse River	WA	X			n/a.
17060110	Lower Snake River	WA	X	X		n/a.
17060201	Upper Salmon	ID	X			n/a.
17060202	Pahsimeroi	ID	X			n/a.
17060203	Middle Salmon-Panther	ID	X			n/a.
17060204	Lemhi	ID	X			n/a.
17060205	Upper Middle Fork Salmon.	ID	X			n/a.
17060206	Lower Middle Fork Salmon.	ID	X			n/a.
17060207	Middle Salmon-Chamberlain.	ID	X			n/a.
17060208	South Fork Salmon	ID	X			n/a.
17060209	Lower Salmon	ID	X			n/a.
17060210	Little Salmon	ID	X			n/a.
17060301	Upper Selway	ID	X	X		n/a.
17060302	Lower Selway	ID	X	X		n/a.
17060303	Lochsa	ID	X			n/a.
17060304	Middle Fork Clearwater	ID	X	X		n/a.
17060305	South Fork Clearwater	ID	X	X		n/a.
17060306	Clearwater	WA/ID	X	X		n/a.
17060308	Lower North Fork Clearwater.	ID	X			Dworshak Dam.
17070101	Middle Columbia-Lake Wallula.	OR/WA	X	X		n/a.
17070103	Umatilla	OR	X	X		McKay Dam (McKay Creek).
17070105	Middle Columbia-Hood	OR/WA	X	X		n/a.
17070106	Klickitat	WA	X	X		n/a.
17070306	Lower Deschutes	OR	X	X		n/a.
17080001	Lower Columbia-Sandy	OR/WA	X	X		Bull Run Dam #2.
17080002	Lewis	WA	X	X		n/a.
17080003	Lower Columbia-Clatskanie.	OR/WA	X	X		n/a.
17080004	Upper Cowlitz	WA	X	X		n/a.
17080005	Cowlitz	WA	X	X		n/a.
17080006	Lower Columbia	OR/WA	X	X		n/a.
17090001	Middle Fork Willamette	OR	X			n/a.
17090002	Coast Fork Willamette	OR	X			Dorena Dam.
17090003	Upper Willamette	OR	X	X		n/a.
17090004	McKenzie	OR	X	X		Cougar Dam.[1]
17090005	North Santiam	OR	X	X		Big Cliff Dam.[2]
17090006	South Santiam	OR	X	X		n/a.
17090007	Middle Willamette	OR	X	X		n/a.
17090008	Yamhill	OR	X	X		n/a.
17090009	Molalla-Pudding	OR	X	X		n/a.
17090010	Tualatin	OR	X	X		n/a.

TABLE 1 TO SUBPART H OF PART 660—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)—Continued

4th Field hydrologic unit code	Hydrologic unit name	State(s)	Chinook salmon	Coho salmon	Puget Sound pink salmon	Impassable dam(s)
17090011	Clackamas	OR	X	X		n/a.
17090012	Lower Willamette	OR	X	X		n/a.
17100101	Hoh-Quillayute	WA	X	X		n/a.
17100102	Queets-Quinault	WA	X	X		n/a.
17100103	Upper Chehalis	WA	X	X		n/a.
17100104	Lower Chehalis	WA	X	X		n/a.
17100105	Grays Harbor	WA	X	X		n/a.
17100106	Willapa	WA	X	X		n/a.
17100201	Necanicum	OR	X	X		n/a.
17100202	Nehalem	OR	X	X		n/a.
17100203	Wilson-Trask-Nestucca	OR	X	X		n/a.
17100204	Siletz-Yaquina	OR	X	X		n/a.
17100205	Alsea	OR	X	X		n/a.
17100206	Siuslaw	OR	X	X		n/a.
17100207	Siltcoos	OR		X		n/a.
17100301	North Umpqua	OR	X	X		n/a.
17100302	South Umpqua	OR	X	X		n/a.
17100303	Umpqua	OR	X	X		n/a.
17100304	Coos	OR	X	X		n/a.
17100305	Coquille	OR	X	X		n/a.
17100306	Sixes	OR	X	X		n/a.
17100307	Upper Rogue	OR	X	X		Lost Creek Dam.
17100308	Middle Rogue	OR	X	X		Emigrant Dam.
17100309	Applegate	CA/OR	X	X		Applegate Dam.
17100310	Lower Rogue	OR	X	X		n/a.
17100311	Illinois	CA/OR	X	X		n/a.
17100312	Chetco	CA/OR	X	X		n/a.
17110001	Fraser	WA	X	X		n/a.
17110002	Strait Of Georgia	WA	X	X	X	n/a.
17110003	San Juan Islands	WA		X		n/a.
17110004	Nooksack	WA	X	X	X	n/a.
17110005	Upper Skagit	WA	X	X	X	Gorge Lake Dam.
17110006	Sauk	WA	X	X	X	n/a.
17110007	Lower Skagit	WA	X	X	X	n/a.
17110008	Stillaguamish	WA	X	X	X	n/a.
17110009	Skykomish	WA	X	X	X	n/a.
17110010	Snoqualmie	WA	X	X	X	Tolt Dam (S. Fork Tolt River).
17110011	Snohomish	WA	X	X	X	n/a.
17110012	Lake Washington	WA	X	X		Cedar Falls (Masonry) Dam (Cedar River).
17110013	Duwamish	WA	X	X	X	n/a.
17110014	Puyallup	WA	X	X	X	n/a.
17110015	Nisqually	WA	X	X	X	n/a.
17110016	Deschutes	WA	X	X		n/a.
17110017	Skokomish	WA	X	X	X	n/a.
17110018	Hood Canal	WA	X	X	X	n/a.
17110019	Puget Sound	WA	X	X	X	n/a.
17110020	Dungeness-Elwha	WA	X	X	X	n/a.
17110021	Crescent-Hoko	WA	X	X		n/a.
18010101	Smith River	CA/OR	X	X		n/a.
18010102	Mad-Redwood	CA	X	X		Robert W. Matthews Dam.
18010103	Upper Eel	CA	X	X		Scott Dam.
18010104	Middle Fork Eel	CA	X	X		n/a.
18010105	Lower Eel	CA	X	X		n/a.
18010106	South Fork Eel	CA	X	X		n/a.
18010107	Mattole	CA	X	X		n/a.
18010108	Big-Navarro-Garcia	CA	X	X		n/a.
18010109	Gualala-Salmon	CA	X	X		n/a.
18010110	Russian	CA	X	X		Coyote Valley Dam (E. Fork Russian R.) Warm Springs Dam (Dry Cr.).
18010206	Upper Klamath	CA/OR	X	X		Keno Dam.
18010207	Shasta	CA	X	X		Dwinnell Dam.
18010208	Scott	CA	X	X		n/a.
18010209	Lower Klamath	CA/OR	X	X		n/a.
18010210	Salmon	CA	X	X		n/a.
18010211	Trinity	CA	X	X		Lewiston Dam.

TABLE 1 TO SUBPART H OF PART 660—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)—Continued

4th Field hydrologic unit code	Hydrologic unit name	State(s)	Chinook salmon	Coho salmon	Puget Sound pink salmon	Impassable dam(s)
18010212	South Fork Trinity	CA	X	X		n/a.
18020104	Sacramento-Stone Corral.	CA	X			n/a.
18020111	Lower American	CA	X			Nimbus Dam.
18020115	Upper Stony	CA	X			Black Butte Dam.
18020116	Upper Cache	CA	X			Capay Dam.[3]
18020125	Upper Yuba	CA	X			n/a.
18020126	Upper Bear	CA	X			Camp Far West Dam.
18020151	Cow Creek	CA	X			n/a.
18020152	Cottonwood Creek	CA	X			n/a.
18020153	Battle Creek	CA	X			n/a.
18020154	Clear Creek-Sacramento River.	CA	X			Keswick Dam (Sacramento R.), Whiskeytown Dam (Clear Creek).
18020155	Paynes Creek-Sacramento River.	CA	X			n/a.
18020156	Thomes Creek-Sacramento River.	CA	X			n/a.
18020157	Big Chico Creek-Sacramento River.	CA	X			n/a.
18020158	Butte Creek	CA	X			n/a.
18020159	Honcut Headwaters-Lower Feather.	CA	X			Feather River Fish Barrier Dam.
18020161	Upper Coon-Upper Auburn[4]	CA	X			n/a.
18020162	Upper Putah	CA	X			Monticello Dam.
18020163	Lower Sacramento	CA	X			n/a.
18040001	Middle San Joaquin-Lower Chowchilla[5]	CA	X			Buchanan Dam (Chowchilla River), Bear Dam (Bear Creek), Owens Dam (Owens Creek) Mariposa Dam.
18040002	Lower San Joaquin River[5]	CA	X			n/a.
18040003	San Joaquin Delta	CA	X			n/a.
18040007	Fresno River	CA	X			Hidden Dam.
18040008	Upper Merced	CA	X			Crocker-Huffman Diversion Dam.
18040009	Upper Tuolumne	CA	X			La Grange Dam (Tuolumne R.).
18040010	Upper Stanislaus	CA	X			Goodwin Dam.
18040011	Upper Calaveras	CA	X			New Hogan Dam.
18040012	Upper Mokelumne	CA	X			Camanche Dam.
18040013	Upper Cosumnes	CA	X			n/a.
18050001	Suisun Bay	CA	X			n/a.
18050002	San Pablo Bay	CA	X	X		San Pablo Dam (San Pablo Cr.).
18050003	Coyote	CA	X	X		LeRoy Anderson Dam.
18050004	San Francisco Bay	CA	X	X		n/a.
18050005	Tomales-Drake Bays	CA	X	X		Nicasio Dam (Nicasio Cr.) Peters Dam (Lagunitas Cr.).
18050006	San Francisco Coastal South.	CA		X		n/a.
18060015	Monterey Bay[6]	CA		X		Newell Dam (Newell Cr.)

[1] Cougar Dam is a barrier to coho salmon only. Chinook salmon are trapped and hauled above the dam.

[2] Big Cliff Dam is a barrier to coho salmon only. Chinook salmon are trapped and hauled above the dam.

[3] Capay Dam was selected as the upstream extent of EFH because it was identified as a complete barrier by NMFS biologists and is located in the vicinity of the historical upstream extent of Chinook salmon distribution.

[4] Natural ''lower falls'' are downstream of any artificial barriers that would meet the criteria for designating them as the upstream extent of EFH; therefore, the upstream extent of EFH within this HU is at the ''lower falls''.

[5] EFH for Chinook salmon in the Middle San Joaquin-Lower Chowchilla HU (18040001) and Lower San Joaquin River HU (18040002) includes the San Joaquin River, its eastern tributaries, and the lower reaches of the western tributaries. Although there is no evidence of current or historical Chinook salmon distribution in the western tributaries (Yoshiyama *et al.* 2001), the lower reaches of these tributaries could provide juvenile rearing habitat or refugia from high flows during floods as salmon migrate along the mainstem in this area.

[6] EFH for coho salmon in the Monterey Bay HU does not include the sections south of the Pajaro HU (18060002).

[FR Doc. 2014–29557 Filed 12–17–14; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 243
Thursday, December 18, 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.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[NOTICE 2014–14]

Federal Office; Notice of Disposition of Petition for Rulemaking

AGENCY: Federal Election Commission.

ACTION: Notice of disposition of petition for rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking (''Petition'') filed on August 28, 2014, by National Convention PBC. The Petition asks the Commission to amend 11 CFR 100.4 to revise the definition of ''federal office'' to include delegates to a constitutional convention. The Commission has decided not to initiate a rulemaking at this time. The Petition and other documents relating to this matter are available on the Commission's Web site, *http://www.fec.gov/fosers/,* and in the Commission's Public Records Office.

DATES: December 18, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Emma K. Lewis, Office of General Counsel, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 28, 2014, the Commission received a Petition for Rulemaking from National Convention PBC regarding the Commission's regulation defining ''federal office,'' 11 CFR 100.4. The regulation provides that ''*Federal office* means the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.'' The Petition asks the Commission to amend 11 CFR 100.4 to add ''a Delegate to a constitutional convention for proposing amendments to the Constitution of the United States.''

The Commission published a Notice of Availability seeking comment on the Petition on October 2, 2014. 79 FR 59459. The Commission received five comments in response to the NOA. Two comments, filed on behalf of a total of four organizations, opposed the Petition, primarily on the grounds that the regulatory change it seeks would be inconsistent with the applicable statutory definition of ''federal office.'' Three comments from individuals supported the Petition on the grounds that delegates to a constitutional convention should be bound by the campaign finance rules that apply to federal candidates (although one of these comments also objected to certain aspects of National Convention PBC's proposal).

The Commission agrees with the commenters who opposed the Petition. The definition of ''federal office'' is specifically set by statute: ''The term 'Federal office' means the office of the President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.'' 52 U.S.C. 30101(3) (formerly 2 U.S.C. 431(3)). The Commission's regulatory definition of ''federal office'' uses materially indistinguishable language, defining a federal office as ''the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.'' 11 CFR 100.4. The Petition and the commenters who supported it provide certain policy arguments in favor of including delegates to a constitutional convention within the scope of the regulation, but the statutory definition of ''federal office'' unambiguously omits such delegates. In situations such as this where the statute contains no relevant ambiguity, the Commission ''must give effect to the unambiguously expressed intent of Congress.'' *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 842–43 (1984).

The Commission therefore declines to commence a rulemaking to add delegates to a constitutional convention to the definition of ''federal office'' in 11 CFR 100.4.

On behalf of the Commission,

Dated: December 11, 2014.

Lee E. Goodman,

Chairman, Federal Election Commission.

[FR Doc. 2014–29601 Filed 12–17–14; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2014–0025]

RIN 1557–AD88

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1502]

RIN 7100–AE 24

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE 12

Regulatory Capital Rules: Regulatory Capital, Proposed Revisions Applicable to Banking Organizations Subject to the Advanced Approaches Risk-Based Capital Rule

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

ACTION: Joint notice of proposed rulemaking (NPR).

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are seeking comment on an NPR that would clarify, correct, and update aspects of the agencies' regulatory capital rule applicable to banking organizations that are subject to the advanced approaches risk-based capital rule (advanced approaches banking organizations). The proposed revisions are largely driven by observations made by the agencies during the parallel-run review process of advanced approaches banking organizations. They are also intended to enhance consistency of the U.S. regulations with international standards for use of the advanced approaches rule.

DATES: Comments must be received no later than February 17, 2015.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rules: Regulatory Capital, Proposed Revisions Applicable to Banking Organizations Subject to the Advanced Approaches Risk-Based Capital Rule'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking ortal—''regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2014–0025'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2014–0025'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2014–0025'' in the Search box and click ''Search''. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1502 and RIN 7100–AE 24, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/ProposedRegs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert de V. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/ProposedRegs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE 12, by any of the following methods:

Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html. Follow instructions for submitting comments on the Agency Web site.

- *Email: Comments@fdic.gov.* Include the RIN 3064–AE 12 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN 3064–AE01 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Senior Risk Expert (202) 649–6982; or Mark Ginsberg, Principal Risk Expert (202) 649–6983, Capital Policy; or Carl Kaminski, Counsel; or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Constance M. Horsley, Assistant Director, (202) 452–5239; Thomas Boemio, Manager, (202) 452–2982; Andrew Willis, Supervisory Financial Analyst, (202) 912–4323, Matthew McQueeney, Senior Financial Analyst, (202) 425–2942, or Justyna Milewski, Financial Analyst, (202) 452–3607, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Christine Graham, Counsel (202) 452–3005; or David W. Alexander, Counsel (202) 452–2877, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Ryan Billingsley, Chief, Capital Policy Section, *rbillingsley@fdic.gov;* or Benedetto Bosco, Capital Markets Policy Analyst, *bbosco@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel,

mphillips@fdic.gov; Rachel Ackmann, Senior Attorney, *rackmann@fdic.gov;* Grace Pyun, Senior Attorney, *gpyun@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) comprehensively revised and strengthened the capital requirements applicable to banking organizations [1] (regulatory capital framework).[2] Among other changes, the regulatory capital framework revised elements of the advanced approaches risk-based capital requirements (advanced approaches rule) now located at subpart E of the agencies' revised regulatory capital framework.[3]

The advanced approaches rule applies to large, internationally active banking organizations, generally those with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, depository institution subsidiaries of those banking organizations that use the advanced approaches rule, and banking organizations that elect to use the advanced approaches (advanced approaches banking organizations).[4] Before an advanced approaches banking organization may use the advanced approaches rule to determine its risk-based capital requirements, it must conduct a satisfactory trial, or parallel run.[5] During the parallel run period, which must be at least four consecutive calendar quarters, an advanced approaches banking organization must demonstrate to the satisfaction of its primary Federal supervisor that it has implemented risk-measurement and risk-management systems that are consistent with the advanced approaches rule and are appropriate given the banking organization's size and level of complexity. After the primary Federal supervisor determines that the banking organization fully complies with all the qualification requirements, has conducted a satisfactory parallel run, and has an adequate process to ensure ongoing compliance, then the banking organization will be required to use the advanced approaches to calculate its risk-based capital requirements.[6]

Consistent with section 171 of the Dodd-Frank Act,[7] an advanced approaches banking organization that is required to calculate its risk-based capital requirements under the advanced approaches rule also must determine its risk-based capital requirements under the generally applicable risk-based capital rule.[8] The lower ratio (*i.e.,* the more binding ratio) for each risk-based capital requirement is the ratio the banking organization must use to determine its compliance with minimum regulatory capital requirements.

In February 2014, the agencies permitted certain banking organizations to exit parallel run and to begin calculating their risk-based capital requirements using the advanced approaches rule, beginning with the second quarter of 2014.[9] Supervisory review of advanced approaches systems conducted as part of the parallel run exit review process has highlighted certain areas of the advanced approaches rule qualification requirements that would benefit from clarification. In addition, the agencies are proposing to make technical revisions to address typographical errors, such as incorrect references, in the regulatory capital framework. The agencies are also proposing clarifications that are intended to enhance the consistency of the U.S. regulations with international standards for use of the advanced approaches. The proposed amendments in this NPR affect only provisions that apply to advanced approaches banking organizations. The agencies are seeking comment on all aspects of the proposed rule.

II. Proposed Rule Corrections and Clarifications

Since publishing the regulatory capital framework, the agencies have identified typographical and technical errors in several provisions, including provisions of subpart E of the regulatory capital framework. The agencies have also identified provisions that warrant clarification or updating in light of revisions to other rules. The agencies are, therefore, proposing to revise the regulatory capital framework as described below.

Definition of Residential Mortgage Exposure

The definition of *residential mortgage exposure* in section 2 of the regulatory capital framework was intended to provide that, for purposes of the advanced approaches rule, an exposure secured by a first or subsequent lien on one-to-four family residential property must be managed as part of a segment of exposures with homogenous risk characteristics, and not on an individual basis, to be considered a residential mortgage exposure.[10] Under the advanced approaches, for retail exposures, a banking organization must have an internal system that groups retail exposures into the appropriate retail exposure subcategory and groups the retail exposures in each retail exposure subcategory into separate segments with homogenous risk characteristics.[11] As currently written, however, the definition of residential mortgage exposure does not provide that advanced approaches banking organizations must group exposures secured by a first or subsequent lien on one-to-four family residential property into separate segments with homogenous risk characteristics, as required under the retail framework of

[1] The term banking organizations includes national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), as well as top-tier savings and loan holding companies domiciled in the United States, except for certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

[2] The Board and the OCC issued a joint final rule on October 11, 2013 (78 FR 62018) and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). In April 2014, the FDIC adopted the interim final rule as a final rule with no substantive changes. 79 FR 20754 (April 14, 2014).

[3] 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC).

[4] 12 CFR 3.100(b)(1) (OCC), 12 CFR 217.100(b)(1) (Board), and 12 CFR 324.100(b)(1) (FDIC).

[5] 12 CFR 3.121(c) (OCC), 12 CFR 217.121(c) (Board), and 12 CFR 324.121(c) (FDIC).

[6] 12 CFR 3.121(d) (OCC), 12 CFR 217.121(d) (Board), and 12 CFR 324.121(d) (FDIC).

[7] *See,* 12 U.S.C. 5371.

[8] Prior to January 1, 2015, the term ''generally applicable risk-based capital rules'' refers to the risk-based capital rules set forth at 12 CFR part 3, appendix A and 12 CFR part 167 (OCC); 12 CFR pt. 208 and 12 CFR part 225, appendix A (Federal Reserve); and 12 CFR part 325, appendix A, and 12 CFR part 390, subpart Z (FDIC). As of January 1, 2015, and thereafter, the term ''generally applicable risk-based capital rules'' will refer to the risk-based capital rules set forth at 12 CFR part 3, subparts A, B, C, and D (OCC); 12 CFR part 217, subparts A, B, C, and D (Board); and 12 CFR part 324, subparts A, B, C, and D (FDIC).

[9] This data is reported on the FFIEC 101, Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, available at *http://www.ffiec.gov/forms101.htm.*

[10] This provision is explicit in the regulatory capital framework definition of residential mortgage exposure for an exposure with an original and outstanding amount of $1 million or less that is primarily secured by a first or subsequent lien on residential property that is not one-to-four family.

[11] *See* 12 CFR 3.122(b)(3) (OCC), 12 CFR 217.122(b)(3) (Board), and 12 CFR 324.122(b)(3) (FDIC).

the advanced approaches. Accordingly, the agencies propose to revise the definition of residential mortgage exposure to provide that, for the purpose of calculating capital requirements under the advanced approaches, any exposure secured by a lien on residential property must be managed as part of a segment of exposures with homogenous risk characteristics, and not on an individual basis, to be considered a residential mortgage exposure. This change would make the definition consistent with the definition used in the 2007 advanced capital adequacy framework implementing Basel II [12] (2007 rule).

Calculation of Total On-Balance Sheet Foreign Exposure

The criteria set forth in section 100(b) of the regulatory capital framework, which describe which banking organizations are required to use the advanced approaches rule, include an explanation of how a banking organization determines whether it meets the $10 billion total on-balance sheet foreign exposure threshold. The advanced approaches rule currently references line-item descriptions from a version of the FFIEC 009 Regulatory Report that has since been modified to adjust or rename those line items. The agencies therefore propose to update the methodology for calculating this measure in section 100(b)(ii) to reflect the relevant line-item descriptions and instructions from the most recent version of the FFIEC 009 Regulatory Report.[13]

Disclosure Requirements for Advanced Approaches Banking Organizations

Section 173 of the regulatory capital framework requires advanced approaches banking organizations that have completed the parallel run process and have received notification from their primary Federal supervisor pursuant to section 121(d) of subpart E to provide timely disclosure of the information in the applicable tables in that section.

Table 6 of section 173 of the regulatory capital framework requires firms to explain and review the structure of internal ratings systems and the relation between internal and external ratings. Section 939A of the Dodd-Frank Act generally requires the Federal banking agencies to remove any reference to, or any requirement involving, the reliance on external credit ratings to assess the creditworthiness of a security or money market instrument. As a result, the agencies are proposing to amend table 6 of section 173 to clarify that the use of external ratings is not required for the purpose of an advanced approaches banking organization's internal rating assessment.

For the purpose of the disclosures required in table 6 of section 173, to the extent that the advanced approaches banking organization considers external ratings in its internal ratings process, it must include an explanation of the relation between the internal and external ratings. An advanced approaches banking organization that does not use or consider external ratings would not be required to make such a disclosure.

Table 9 in section 173 of the regulatory capital framework describes information related to securitization exposures that certain advanced approaches banking organizations are required to disclose. In the regulatory capital framework, the agencies revised the risk-based capital treatment of these items, but did not revise Table 9 to reflect the revisions. The agencies propose to update line (i)(2) under quantitative disclosures to appropriately reflect the current treatment under the regulatory capital framework of credit-enhancing interest only strips (CEIOs) and after-tax gain-on-sale resulting from a securitization. Specifically, under the regulatory capital framework, an after-tax gain-on-sale resulting from a securitization is deducted from common equity tier 1 capital, rather than from tier 1 capital as was the case under the 2007 rule. Also, under the regulatory capital framework, CEIOs that do not constitute after-tax gain-on-sale are risk-weighted at 1,250 percent, rather than deducted from total capital, as was the case under the 2007 rule.

Collateral Posted by a Clearing Member Client Banking Organization and Clearing Member Banking Organization

Sections 133(b)(4)(ii) and 133(c)(4)(ii) of the regulatory capital framework require a clearing member client banking organization or a clearing member banking organization, respectively, to calculate a risk-weighted asset amount for any collateral provided to a central counterparty (CCP), clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under section 131. The agencies note that section 131 only provides for the risk-weighting of wholesale and retail exposures whereas collateral posted to a CCP, clearing member, or custodian may also be in the form of a securitization exposure, equity exposure, or a covered position. Therefore, the agencies are proposing to amend sections 133(b)(4)(ii) and 133(c)(4)(ii) to replace the cross reference to section 131 with a broader cross reference, as applicable, to subpart E, which provides the risk-weighting methodology for wholesale, retail, securitization and equity exposures, or subpart F, which provides the risk weighting methodology for covered positions, so that the clearing member client banking organization and clearing member banking organization can determine the correct risk weight for the collateral provided.

Risk Weight for Certain Client Cleared Transactions

Under the regulatory capital framework, a clearing member banking organization must assign a 2 percent risk weight to the trade exposure amount for a cleared transaction with a qualifying central counterparty (QCCP) and a risk weight according to section 32 to the trade exposure amount for a cleared transaction with a CCP that is not a QCCP. The definition of *cleared transaction* includes a derivative contract or repo-style transaction between a CCP and a clearing member banking organization where the banking organization is acting as a financial intermediary on behalf of its clearing member client and the transaction offsets a derivative contract or repo-style transaction between the clearing member banking organization and its client that meets the requirements of section 3(a) of the regulatory capital framework. The agencies are proposing, consistent with the Basel Committee's capital requirements for bank exposures to central counterparties capital framework,[14] to permit clearing member banking organizations to assign a zero percent risk weight under subpart E to the trade exposure amount of a cleared transaction that arises when a clearing member banking organization does not guarantee the performance of the CCP and has no payment obligation to the clearing member client in the event of a CCP default. In these circumstances, requiring the clearing member banking organization to include a trade exposure amount to the CCP in credit risk-weighted assets would generally result in an overstatement of its total risk-weighted assets under the advanced approaches rule. However, if a clearing member banking organization does guarantee the performance of the CCP to the clearing member client, then a clearing member banking organization

[12] 72 FR 69288 (December 7, 2007).

[13] Available at *http://www.ffiec.gov/forms009_009a.htm.*

[14] Available at *http://www.bis.org/publ/bcbs282.pdf.*

would assign a risk weight of 2 percent to its trade exposure amount for a cleared transaction with a QCCP or a risk weight according to section 32 of the regulatory capital framework to its trade exposure amount (as defined in section 133) for a cleared transaction with a CCP that is not a QCCP.

This proposed approach would align the risk-based capital requirements for client-cleared transactions with recently finalized revisions to the treatment of those transactions under the agencies' supplementary leverage ratio rule.[15] When calculating the supplementary leverage ratio, the agencies do not require a clearing member banking organization to include the exposure to the CCP for a client-cleared transaction in total leverage exposure if the clearing member banking organization does not guarantee the performance of the CCP to the clearing member client.

Application and Disclosure of the Supplementary Leverage Ratio

Section 10(c) of the regulatory capital framework requires advanced approaches banking organizations that have completed the parallel run process to calculate the supplementary leverage ratio as described under section 10(c)(4).[16] The agencies are proposing to clarify in this rulemaking that the supplementary leverage ratio described in section 10(c)(4) applies to a banking organization that becomes subject to the advanced approaches pursuant to section 100(b)(1), regardless of the status of its parallel run process. Specifically, the supplementary leverage ratio described in section 10(c)(4) would apply to a banking organization immediately following the quarter in which the banking organization become subject to the advanced approaches pursuant to section 100(b)(1).

Advanced approaches banking organizations are subject to supplementary leverage ratio disclosure requirements described in sections 172 and 173 of the regulatory capital framework.[17] The agencies propose to revise sections 172 and 173 of the regulatory capital framework, consistent with the revisions proposed for section 10(c)(4). Specifically, the agencies are proposing to amend section 172(d) to clarify that the supplementary leverage ratio disclosure requirements described in section 172 apply without regard to whether the banking organization has completed the parallel run process. Under this proposal, any banking organization that becomes an advanced approaches banking organization pursuant to section 100(b)(1) before January 1, 2015, must publicly disclose its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) quarterly, beginning with the first quarter in 2015. A banking organizations that becomes an advanced approaches banking organization pursuant to section 100(b)(1) on or after January 1, 2015, must publicly disclose its supplementary leverage ratio and components thereof, beginning with the calendar quarter immediately following the calendar quarter in which the banking organization becomes an advanced approaches banking organization. For example, a banking organization that becomes subject to the advanced approaches because it has $250 billion or more in consolidated total assets as of year-end 2015 pursuant to section 100(b)(1)(i) would begin disclosing its supplementary leverage ratio as of March 31, 2016.

In addition, the agencies are proposing to revise section 173 to clarify that a top-tier[18] advanced approaches banking organization, regardless of its parallel run status, is required to publicly disclose Table 13 for twelve consecutive quarters or a shorter period, as applicable, beginning on January 1, 2015. For example, for a banking organization that becomes subject to the supplementary leverage ratio disclosure requirements on January 1, 2015, reporting for the first quarter of 2015 would include data for one quarter, reporting for the second quarter of 2015 would include data for two quarters, and reporting for the fourth quarter of 2017 would include data for 12 quarters.

Exposure at Default Adjustment for Recognized Credit Valuation Adjustment (CVA)

Under subpart E of the regulatory capital framework, an advanced approaches banking organization that has received supervisory approval to calculate exposure at default (EAD) for derivative contracts using the internal models methodology (IMM) is permitted to reduce effective expected positive exposure (effective EPE) by the CVA recognized on the advanced approaches banking organization's balance sheet to reflect the fair value adjustment for counterparty credit risk in the valuation of a group of over-the-counter (OTC) derivative transactions in a netting set. The recognized CVA on the OTC derivative netting set deducted from effective EPE must not include any adjustments made by the advanced approaches banking organization to common equity tier 1 capital attributable to changes in the fair value of the banking organization's liabilities that are due to changes in its own credit risk since the inception of the derivative transaction with the counterparty. Similarly, the agencies are proposing to allow advanced approaches banking organizations to reduce the EAD for OTC derivative contracts calculated according to the current exposure methodology in section 132(c) for the purpose of calculating advanced approaches total risk-weighted assets. The agencies note that in determining the fair value of a derivative on a banking organization's balance sheet, the recognized CVA on the netting set of OTC derivative contracts is intended to reflect the credit quality of the counterparty.

As noted in the preamble to the regulatory capital framework, the CVA capital charge in section 132(e) addresses fair value losses resulting from the deterioration of a counterparty's credit quality short of default. The proposal to permit advanced approaches banking organizations to reduce EAD by the recognized CVA on an OTC derivative netting set would prevent the double counting of the counterparty credit risk, which is already included in advanced approaches total risk-weighted assets through the CVA capital charge. Consistent with the Basel Committee's Basel III capital standards and the treatment of recognized CVA in the calculation of EAD for OTC derivatives according to the IMM, the agencies are proposing to amend section 132(c)(1) to permit an advanced approaches banking organization to reduce the EAD calculated according to the current exposure methodology by the recognized CVA on the OTC derivative netting set. The agencies note that, for the purpose of calculating standardized total risk-weighted assets, advanced approaches banking organizations would not be permitted to reduce the EAD calculated according to the current exposure methodology because the standardized total risk-weighted assets calculation does not include the CVA

[15] 79 FR 57725, 57735 (Sept. 26, 2014).

[16] The agencies published a joint final rule in the **Federal Register** on September 26, 2014 (79 FR 57725) that revised the definition of the denominator of the supplementary leverage ratio (2014 SLR rule) that the agencies had adopted in the regulatory capital framework.

[17] Section 172(d) was added to the regulatory capital framework as part of the 2014 SLR rule.

[18] Disclosure requirements in this section apply only to banking organizations that are not a consolidated subsidiary of a BHC, covered SLHC, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

capital charge calculated in section 132(e).

Margin Period of Risk in the Internal Models Methodology (IMM)

Section 132(d)(5)(iii)(B) of the regulatory capital framework includes upward adjustments to the margin period of risk in the IMM for large netting sets, netting sets involving illiquid collateral or OTC derivatives that cannot easily be replaced, or netting sets with two or more margin disputes with the counterparty over the previous two quarters that last for a certain length of time. The regulatory capital framework inadvertently required an upward adjustment to the margin period of risk for cleared transactions based solely on the fact that they are part of a large netting set. The agencies are therefore proposing to amend this provision to clarify that cleared transactions that are part of a netting set subject to a collateral agreement that exceeds 5,000 trades at any time during the previous quarter are not subject to the twenty business day margin-period-of-risk requirement unless the netting set contains illiquid collateral, OTC derivatives that cannot easily be replaced, or the banking organization had two or more margin disputes with the counterparty over the previous two quarters that last for a certain length of time. As noted in the preamble to the regulatory capital framework, the 5,000 trade threshold is one indicator that a set of transactions may require a lengthy period to close out in the event of a default of a counterparty. The agencies believe that unlike a large netting set of over-the-counter derivatives, a large netting set of cleared transactions would not require a lengthy period to close out in the event of a default of the CCP. In addition, the proposed amendment would conform the provision to the similar provision in section 37 of subpart D. However, for any netting set that involves illiquid collateral or OTC derivatives that cannot easily be replaced, or that has two or more margin disputes within a netting set over the previous two quarters that last for a certain length of time, the margin period of risk would require adjustments, as specified under section 132(d)(5)(iii)(B), regardless of whether the netting set consists of cleared transactions.

Qualification Requirements and Mechanics for Calculating Risk-Weighted Assets of Wholesale and Retail Exposures Under the Advanced Approaches

In February, 2014, the OCC and Board granted permission to a number of banking organizations to begin calculating their risk-based capital requirements under the advanced approaches.[19] During the parallel run evaluation process, the agencies concluded that several areas of the advanced approaches rule should be revised to (1) clarify the qualification requirements and mechanics for calculating risk-weighted assets under the advanced approaches rule and (2) promote international consistency by more clearly aligning the U.S. regulations with international standards for use of the advanced approaches rule.

Sections 122 and 131 of the regulatory capital framework set forth the qualification requirements for the internal ratings-based approach (IRB) for advanced approaches banking organizations and describe the mechanics for calculating risk-weighted assets for wholesale and retail exposures under the advanced approaches. When the agencies initially adopted the advanced approaches rule in the 2007 rule, they viewed certain elements of the international Basel framework as being more akin to supervisory guidance, and therefore incorporated these elements into the supervisory review process rather than the advanced approaches rule. However, the agencies believe elements of sections 122 and 131 of the regulatory capital framework should be clarified to ensure that advanced approaches banking organizations appropriately: (i) Obtain and consider all relevant and material information to estimate probability of default (PD), loss given default (LGD), and EAD; (ii) quantify risk parameters for wholesale and retail exposures; and (iii) establish internal requirements for collateral and risk management processes.

Accordingly, the agencies are proposing language to add specificity and enhance transparency regarding the qualification process for the IRB approach, as well as the mechanics used to calculate total wholesale and retail risk-weighted assets. More specifically, the NPR would amend sections 122 and 131 of the regulatory capital framework to clarify requirements associated with: (i) The frequency for reviewing risk rating systems, (ii) the independence of the systems' development, design, and implementation, (iii) time horizons for default and loss data when estimating risk parameters, (iv) changes in banking organizations' lending, payment processing, and account monitoring practices, (v) the use of all relevant available data for assigning risk ratings, and (vi) the need for internal requirements for collateral management and risk management processes. These modifications are consistent with the current overarching principles in sections 122 and 131 of the regulatory capital framework that advanced approaches banking organizations must have an internal risk rating and segmentation system that accurately and reliably differentiates among degrees of credit risk for wholesale and retail exposures, as well as a comprehensive risk-parameter quantification process that produces accurate, timely, and reliable risk-parameter estimates. The agencies emphasize that the proposed revisions are intended to clarify, but not change, existing requirements. In fact, many of these clarifications are already included in agency guidance or examination materials. Therefore, because they have demonstrated that they comply with the existing requirements, the agencies would expect that advanced approaches banking organizations that have already exited parallel run have demonstrated that they would meet the proposed requirements.

Fair Value of Liabilities

Section 22 of the regulatory capital framework requires a banking organization to adjust its common equity tier 1 capital for changes in the fair value of liabilities due to changes in the banking organization's own credit risk. The adjustment is made by deducting from common equity tier 1 capital any net gain and adding to common equity tier 1 capital any net loss to offset the capital effect of the changes in fair value of liabilities due to changes in the banking organization's own credit risk.[20] Additionally, the regulatory capital framework requires advanced approaches banking organizations to deduct the credit spread premium over the risk-free rate for derivatives that are liabilities.

The agencies recognize that the regulatory capital framework is unclear as to whether the deduction of the credit spread premium for advanced approaches banking organizations is in addition to the adjustment for net gains or losses associated with changes in the value of liabilities attributed to changes in the banking organization's own credit risk. Therefore, the agencies are clarifying that for derivative liabilities, an advanced approaches banking organization would make the deduction

[19] Board Press Release *http://www.federalreserve.gov/newsevents/press/bcreg/20140221a.htm;* OCC Press release *http://www.occ.gov/news-issuances/news-releases/2014/nr-ia-2014-21.html.*

[20] 12 CFR 3.22(b)(1)(iii) (OCC), 12 CFR 217.22(b)(1)(iii) (Board), and 12 CFR 324.22(b)(1)(iii) (FDIC).

of the credit spread premium over the risk-free rate as the adjustment for changes in the fair value of those derivative liabilities due to changes in the banking organization's own credit risk.

Technical Corrections

In addition to the revisions discussed above, the proposed rule would also make certain technical corrections. Most of the proposed corrections to these technical errors are self-explanatory and, therefore, do not warrant specific discussion in this preamble. In addition, there are several reference errors that the agencies propose to correct in an effort to better clarify the rule requirements. For example, the proposed rule would correct the following internal cross-references in the regulatory capital framework.

- In section 131(e)(3)(vi), amendments to reference section 22(d) and not section 22(a)(7);
- In Table 1 of section 132, amendments to the reference in the column heading to state that ''Non-sovereign issuers risk weight under this section (in percent)'' and ''Sovereign issuers risk weight under this section (in percent)'' actually are found in section 32.
- In section 132(d)(7)(iv)(B), amendments to reference section 132(b)(2) and not section 131(b)(2);
- In section 132(d)(9)(ii), amendments to reference section 132(e)(6) and not section 132(e)(3);
- In section 133(b)(3)(i)(B), amendments to reference section 133(b)(3)(i)(A) and not section 132(b)(3)(i)(A); and
- In section 136(e)(2)(i) and 136(e)(2)(ii), amendments to reference section 136(e)(1) and (e)(2) and not section 135(e)(1) and (e)(2).

III. Regulatory Analyses

A. Paperwork Reduction Act (PRA)

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposed rule and determined that it would not introduce any new collection of information pursuant to the PRA.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Using the SBA's size standards, as of December 31, 2013, the OCC supervised 1,231 small entities.[21]

As described in the **SUPPLEMENTARY INFORMATION** section of the preamble, the proposed rule would apply only to advanced approaches banking organizations. *Advanced approaches banking organization* is defined to include a national bank or Federal savings association that has, or is a subsidiary of, a bank holding company or savings and loan holding company that has total consolidated assets of $250 billion or more, total consolidated on-balance sheet foreign exposure of $10 billion or more, or that has elected to use the advanced approaches framework. After considering the SBA's size standards and General Principles of Affiliation to identify small entities, the OCC determined that no small national banks or Federal savings associations are advanced approaches banking organizations. Because the proposed rule would apply only to advanced approaches banking organizations, it would not impact any OCC-supervised small entities. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

FDIC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare an Initial Regulatory Flexibility Act analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Using the SBA's size standards, as of June 30, 2014, the FDIC supervised 3,573 small entities. As described in the **SUPPLEMENTARY INFORMATION** section of the preamble, however, the proposed rule would apply only to advanced approaches banking organizations. *Advanced approaches banking organization* is defined to include a state nonmember bank or a state savings association that has, or is a subsidiary of, a bank holding company or savings and loan holding company that has total consolidated assets of $250 billion or more, total consolidated on-balance sheet foreign exposure of $10 billion or more, or that has elected to use the advanced approaches framework. As of June 30, 2014, based on a $550 million threshold, 2 (out of 3,267) small state nonmember banks and no (out of 306) small state savings associations were under the advanced approaches framework. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

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

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed above, this proposed rule would clarify, correct, and update aspects of the agencies' regulatory capital framework applicable to banking organizations that are subject to the advanced approaches. The proposed revisions are largely driven by observations made by the agencies during the parallel-run review process of advanced approaches banking organizations as well as a recent assessment of the regulatory capital framework.

Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less (a small banking organization).[22] As of June 30, 2014, there were approximately 657 small state member banks, 3,719 small bank holding companies, and 254 small savings and loan holding companies.

The proposed rule would apply only to advanced approaches banking

[21] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity. The OCC used December 31, 2013, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[22] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

organizations, which, generally, are banking organizations with total consolidated assets of $250 billion or more, that have total consolidated on-balance sheet foreign exposure of $10 billion or more, are a subsidiary of an advanced approaches depository institution, or that elect to use the advanced approaches framework. Currently, no small top-tier bank holding company, top-tier savings and loan holding company, or state member bank is an advanced approaches banking organization, so there would be no additional projected compliance requirements imposed on small bank holding companies, savings and loan holding companies, or state member banks. The Board expects that any small bank holding company, savings and loan holding company, or state member bank that would be covered by this proposed rule would rely on its parent banking organization for compliance and would not bear additional costs.

The Board is aware of no other federal rules that duplicate, overlap, or conflict with the proposed rule. The Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the notice of proposed rulemaking under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The proposed rule includes clarifications, corrections, and updates for certain aspects of the agencies' regulatory capital rules applicable to national banks and Federal savings associations subject to the OCC's advanced approaches risk-based capital rule.

Because the proposed rule is designed to clarify, correct, and update existing rules, and does not introduce any new requirements, the OCC has determined that it would not result in expenditures by State, local, and Tribal governments, or by the private sector, of $100 million or more. Accordingly, the OCC has not prepared a written statement to accompany its proposed rule.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 217

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

12 CFR Part 324

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a, 1462, 1462a, 1463, 1464, 3907, 3909, 1831o, and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend part 3 of chapter I of title 12, Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Section 3.2 is amended by revising the definition of ''Residential mortgage exposure'' to read as follows:

§ 3.2 Definitions.

* * * * *

Residential mortgage exposure means an exposure (other than a securitization exposure, equity exposure, statutory multifamily mortgage, or presold construction loan) that is:

(1)(i) An exposure that is primarily secured by a first or subsequent lien on one-to-four family residential property; or

(ii) An exposure with an original and outstanding amount of $1 million or less that is primarily secured by a first or subsequent lien on residential property that is not one-to-four family; and

(2) For purposes of calculating capital requirements under subpart E of this part, managed as part of a segment of exposures with homogeneous risk characteristics and not on an individual-exposure basis.

* * * * *

■ 3. Section 3.10 is amended by revising paragraph (c) introductory text to read as follows:

§ 3.10 Minimum capital requirements.

* * * * *

(c) *Advanced approaches capital ratio calculations.* An advanced approaches national bank or Federal savings association that has completed the parallel run process and received notification from the OCC pursuant to § 3.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches national bank or Federal savings association must determine its supplementary leverage

ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association meets any of the criteria in § 3.100(b)(1).

* * * * *

■ 4. Section 3.22 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 3.22 Regulatory capital adjustments and deductions.

* * * * *

(b) * * *

(1) * * *

(iii) A national bank or Federal savings association must deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the national bank's or Federal savings association's own credit risk. An advanced approaches national bank or Federal savings association must deduct the difference between its credit spread premium and the risk-free rate for derivatives that are liabilities as part of this adjustment.

* * * * *

■ 5. Section 3.100 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 3.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) * * *

(1) * * *

(ii) Has consolidated total on-balance sheet foreign exposure on its most recent year-end Call Report equal to $10 billion or more (where total on-balance sheet foreign exposure equals total foreign countries cross-border claims on an ultimate-risk basis, plus total foreign countries claims on local residents on an ultimate-risk basis, plus total foreign countries fair value of foreign exchange and derivative products), calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report;

* * * * *

■ 6. Section 3.122 is amended by:

■ a. Revising paragraphs (a)(3) and (b)(1);

■ b. Adding paragraph (b)(2)(iii);

■ c. Revising paragraphs (b)(3) and (5) and (c)(1), (2), (5), and (6);

■ d. Redesignating paragraphs (c)(9) and (10) as paragraphs (c)(10) and (11), revising them, and adding a new paragraph (c)(9); and

■ e. Revising paragraph (i)(5).

The revisions and additions read as follows:

§ 3.122 Qualification requirements.

(a) * * *

(3) Each national bank or Federal savings association must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements of this section and are appropriate given the national bank's or Federal savings association's size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a national bank's or Federal savings association's risk-based capital requirements are located at any affiliate of the national bank or Federal savings association, the national bank or Federal savings association itself must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of long run experience with respect to its own credit risk and operational risk exposures.

(b) *Risk rating and segmentation systems for wholesale and retail exposures.* (1)(i) A national bank or Federal savings association must have an internal risk rating and segmentation system that accurately, reliably, and meaningfully differentiates among degrees of credit risk for the national bank's or Federal savings association's wholesale and retail exposures. When assigning an internal risk rating, a national bank or Federal savings association may consider a third-party assessment of credit risk, provided that the national bank's or Federal savings association's internal risk rating assignment does not rely solely on the external assessment.

(ii) If a national bank or Federal savings association uses multiple rating or segmentation systems, the national bank's or Federal savings association's rationale for assigning an obligor or exposure to a particular system must be documented and applied in a manner that best reflects the obligor's or exposure's level of risk. A national bank or Federal savings association must not inappropriately allocate obligors or exposures across systems to minimize regulatory capital requirements.

(iii) In assigning ratings to wholesale obligors and exposures, including loss severity ratings grades to wholesale exposures, and assigning retail exposures to retail segments, a national bank or Federal savings association must use all relevant and material information and ensure that the information is current.

(iv) When assigning an obligor to a PD rating or retail exposure to a PD segment, a national bank or Federal savings association must assess the obligor or retail borrower's ability and willingness to contractually perform, taking a conservative view of projected information.

(2) * * *

(iii) A national bank or Federal savings association must have an effective process to obtain and update in a timely manner relevant and material information on obligor and exposure characteristics that affect PD, LGD and EAD.

(3) For retail exposures:

(i) A national bank or Federal savings association must have an internal system that groups retail exposures into the appropriate retail exposure subcategory and groups the retail exposures in each retail exposure subcategory into separate segments with homogeneous risk characteristics that provide a meaningful differentiation of risk. The national bank's or Federal savings association's system must identify and group in separate segments by subcategories exposures identified in § 3.131(c)(2)(ii) and (iii).

(ii) A national bank or Federal savings association must have an internal system that captures all relevant exposure risk characteristics, including borrower credit score, product and collateral types, as well as exposure delinquencies, and must consider cross-collateral provisions, where present.

(iii) The national bank or Federal savings association must review and, if appropriate, update assignments of individual retail exposures to segments and the loss characteristics and delinquency status of each identified risk segment. These reviews must occur whenever the national bank or Federal savings association receives new material information, but generally no less frequently than quarterly, and, in all cases, at least annually.

* * * * *

(5) The national bank's or Federal savings association's internal risk rating system for wholesale exposures must provide for the review and update (as appropriate) of each obligor rating and (if applicable) each loss severity rating whenever the national bank or Federal savings association obtains relevant and material information on the obligor or exposure that affect PD, LGD and EAD, but no less frequently than annually.

(c) *Quantification of risk parameters for wholesale and retail exposures.* (1) The national bank or Federal savings association must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters on a consistent basis for the national bank's or Federal savings association's wholesale and retail exposures.

(2) A national bank's or Federal savings association's estimates of PD,

LGD, and EAD must incorporate all relevant, material, and available data that is reflective of the national bank's or Federal savings association's actual wholesale and retail exposures and of sufficient quality to support the determination of risk-based capital requirements for the exposures. In particular, the population of exposures in the data used for estimation purposes, and lending standards in use when the data were generated, and other relevant characteristics, should closely match or be comparable to the national bank's or Federal savings association's exposures and standards. In addition, a national bank or Federal savings association must:

(i) Demonstrate that its estimates are representative of long run experience, including periods of economic downturn conditions, whether internal or external data are used;

(ii) Take into account any changes in lending practice or the process for pursuing recoveries over the observation period;

(iii) Promptly reflect technical advances, new data, and other information as they become available;

(iv) Demonstrate that the data used to estimate risk parameters support the accuracy and robustness of those estimates; and

(v) Demonstrate that its estimation technique performs well in out-of-sample tests whenever possible.

* * * * *

(5) The national bank or Federal savings association must be able to demonstrate which variables have been found to be statistically significant with regard to EAD. The national bank's or Federal savings association's EAD estimates must reflect its specific policies and strategies with regard to account management, including account monitoring and payment processing, and its ability and willingness to prevent further drawdowns in circumstances short of payment default. The national bank or Federal savings association must have adequate systems and procedures in place to monitor current outstanding amounts against committed lines, and changes in outstanding amounts per obligor and obligor rating grade and per retail segment. The national bank or Federal savings association must be able to monitor outstanding amounts on a daily basis.

(6) At a minimum, PD estimates for wholesale obligors and retail segments must be based on at least five years of default data. LGD estimates for wholesale exposures must be based on at least seven years of loss severity data, and LGD estimates for retail segments must be based on at least five years of loss severity data. EAD estimates for wholesale exposures must be based on at least seven years of exposure amount data, and EAD estimates for retail segments must be based on at least five years of exposure amount data. If the national bank or Federal savings association has relevant and material reference data that span a longer period of time than the minimum time periods specified above, the national bank or Federal savings association must incorporate such data in its estimates, provided that it does not place undue weight on periods of favorable or benign economic conditions relative to periods of economic downturn conditions.

* * * * *

(9) If a national bank or Federal savings association uses internal data obtained prior to becoming subject to this subpart E or external data to arrive at PD, LGD, or EAD estimates, the national bank or Federal savings association must demonstrate to the OCC that the national bank or Federal savings association has made appropriate adjustments if necessary to be consistent with the definition of default in § 3.101. Internal data obtained after the national bank or Federal savings association becomes subject to this subpart E must be consistent with the definition of default in § 3.101.

(10) The national bank or Federal savings association must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(11) The national bank or Federal savings association must, at least annually, conduct a comprehensive review and analysis of reference data to the national bank's or Federal savings association's exposures, quality of reference data to support PD, LGD, and EAD estimates, and consistency of reference data to the definition of default in § 3.101.

* * * * *

(i) * * *

(5) The national bank or Federal savings association must have an internal audit function or equivalent function that is independent of business-line management that at least annually:

(i) Reviews the national bank's or Federal savings association's advanced systems and associated operations, including the operations of its credit function and estimations of PD, LGD, and EAD;

(ii) Assesses the effectiveness of the controls supporting the national bank's or Federal savings association's advanced systems; and

(iii) Documents and reports its findings to the national bank's or Federal savings association's board of directors (or a committee thereof).

* * * * *

■ 7. Section 3.131 is amended by:

■ a. Revising paragraphs (d)(5)(ii) and (iii); and

■ b. In paragraph (e)(3)(vi), removing ''§ 3.22(a)(7)'' and adding ''§ 3.22(d)'' in its place.

The revisions read as follows:

§ 3.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(d) * * *

(5) * * *

(ii) A national bank or Federal savings association may take into account the risk reducing effects of guarantees and credit derivatives in support of retail exposures in a segment when quantifying the PD and LGD of the segment. In doing so, a national bank or Federal savings association must consider all relevant available information.

(iii) Except as provided in paragraph (d)(6) of this section, a national bank or Federal savings association may take into account the risk reducing effects of collateral in support of a wholesale exposure when quantifying the LGD of the exposure, and may take into account the risk reducing effects of collateral in support of retail exposures when quantifying the PD and LGD of the segment. In order to do so, a national bank or Federal savings association must have established internal requirements for collateral management, legal certainty, and risk management processes.

* * * * *

■ 8. Section 3.132 is amended by:

■ a. In Table 1 to § 3.132, removing ''this section'' and adding ''§ 3.32'' in its place, wherever it appears;

■ b. Revising paragraphs (c)(1) and (d)(5)(iii)(B);

■ c. In paragraph (d)(7)(iv)(B), removing ''§ 3.131(b)(2)'' and adding ''§ 3.132(b)(2)'' in its place; and

■ d. In paragraph (d)(9)(ii), removing ''paragraph (e)(3)'' and adding ''paragraph (e)(6)'' in its place.

The revisions read as follows:

§ 3.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(c) *EAD for OTC derivative contracts*—(1) *OTC derivative contracts not subject to a qualifying master netting agreement.* A national bank or

Federal savings association must determine the EAD for an OTC derivative contract that is not subject to a qualifying master netting agreement using the current exposure methodology in paragraph (c)(5) of this section or using the internal models methodology described in paragraph (d) of this section. A national bank or Federal savings association may reduce the EAD calculated according to paragraphs (c)(5) or (d) of this section by the credit valuation adjustment that the national bank or Federal savings association has recognized in its balance sheet valuation of any OTC derivative contracts in the netting set. For purposes of this paragraph (c), the credit valuation adjustment does not include any adjustments to common equity tier 1 capital attributable to changes in the fair value of the national bank's or Federal savings association's liabilities that are due to changes in its own credit risk since the inception of the transaction with the counterparty.

* * * * *

(d) * * *

(5) * * *

(iii) * * *

(B) Twenty business days if the number of trades in a netting set exceeds 5,000 at any time during the previous quarter (except if the national bank or Federal savings association is calculating EAD for a cleared transaction under § 3.133) or contains one or more trades involving illiquid collateral or any derivative contract that cannot be easily replaced. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the margin period of risk, then the national bank or Federal savings association must use a margin period of risk for that netting set that is at least two times the minimum margin period of risk for that netting set. If the periodicity of the receipt of collateral is N-days, the minimum margin period of risk is the minimum margin period of risk under this paragraph (d) plus N minus 1. This period should be extended to cover any impediments to prompt re-hedging of any market risk.

* * * * *

■ 9. Section 3.133 is amended by:

■ a. In paragraph (b)(3)(i)(B) removing ''§ 3.132(b)(3)(i)(A)'' and adding ''§ 3.133(b)(3)(i)(A)'' in its place;

■ b. In paragraph (b)(4)(ii) removing ''§ 3.131'' and adding ''subparts E or F of this part, as applicable'' in its place;

■ c. Adding paragraph (c)(3)(iii); and

■ d. In paragraph (c)(4)(ii) removing ''§ 3.131'' and adding ''subparts E or F of this part, as applicable'' in its place.

The addition reads as follows:

§ 3.133 Cleared transactions.

* * * * *

(c) * * *

(3) * * *

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member national bank or Federal savings association may apply a risk weight of 0 percent to the trade exposure amount for a cleared transaction with a CCP where the clearing member national bank or Federal savings association is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 3.3(a), and the clearing member national bank or Federal savings association is not obligated to reimburse the clearing member client in the event of the CCP default.

* * * * *

§ 3.136 [Amended]

■ 10. Section 3.136 is amended by:

■ a. In paragraph (e)(2)(i), removing ''§ 3.135(e)(1) and (e)(2)'' and adding ''§ 3.136(e)(1) and (2)'' in its place; and

■ b. In paragraph (e)(2)(ii), removing ''§§ 3.135(e)(1) and (e)(2)'' and adding ''§ 3.136(e)(1) and (2)'' in its place.

■ 11. Section 3.172 is amended by revising paragraph (d), as added at 79 FR 57743, September 26, 2014, effective January 1, 2015, to read as follows:

§ 3.172 Disclosure requirements.

* * * * *

(d)(1) A national bank or Federal savings association that meets any of the criteria in § 3.100(b)(1) before January 1, 2015, must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part, beginning with the first quarter in 2015. This disclosure requirement applies without regard to whether the national bank or Federal savings association has completed the parallel run process and received notification from the OCC pursuant to § 3.121(d).

(2) A national bank or Federal savings association that meets any of the criteria in § 3.100(b)(1) on or after January 1, 2015, must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association becomes an advanced approaches national bank or Federal savings association. This disclosure requirement applies without regard to whether the national bank or Federal savings association has completed the parallel run process and has received notification from the OCC pursuant to § 3.121(d).

■ 12. Section 3.173 is amended by:

■ a. Redesignating paragraph (a) introductory text, as revised at 79 FR 57743, September 26, 2014, effective January 1, 2015, as paragraph (a)(1) and revising it;

■ b. Adding paragraphs (a)(2) and (3);

■ c. Revising the entry for (a)(1) in Table 6 to § 3.173; and

■ d. Revising the entry for (i)(2) in Table 9 to § 3.173.

The revisions and additions read as follows:

§ 3.173 Disclosures by certain advanced approaches national banks or Federal savings associations.

(a)(1) An advanced approaches national bank or Federal savings association described in § 3.172(b) must make the disclosures described in Tables 1 through 12 to § 3.173.

(2) An advanced approaches national bank or Federal savings association that is required to publicly disclose its supplementary leverage ratio pursuant to § 3.172(d) must make the disclosures required under Table 13 to § 3.173, unless the national bank or Federal savings association is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosures requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

(3) The disclosures described in Tables 1 through 12 to § 3.173 must be made publicly available for twelve consecutive quarters beginning on January 1, 2014, or a shorter period, as applicable, for the quarters after the national bank or Federal savings association has completed the parallel run process and received notification from the OCC pursuant to § 121(d) of subpart E of this part. The disclosures described in Table 13 to § 3.173 must be made publicly available for twelve consecutive quarters beginning on January 1, 2015, or a shorter period, as applicable, for the quarters after the national bank or Federal savings association becomes subject to the disclosure of the supplementary leverage ratio pursuant to § 3.172(d).

* * * * *

TABLE 6 TO § 3.173—CREDIT RISK: DISCLOSURES FOR PORTFOLIOS SUBJECT TO IRB RISK-BASED CAPITAL FORMULA

Qualitative disclosures	(a)	* * * (1) Structure of internal rating systems and if the national bank or Federal savings association considers external ratings, the relation between internal and external ratings;
* * * * * * *		

* * * * *

TABLE 9 TO § 3.173—SECURITIZATION

* * * * * * *		
Quantitative disclosures	* * *	
	(i)	* * * (2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any: (A) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and (B) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.
* * * * * * *		

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, part 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 13. The authority citation for part 217 continues to read as follows:

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

■ 14. Section 217.2 is amended by revising the definition of ''Residential mortgage exposure'' to read as follows:

§ 217.2 Definitions.

* * * * *

Residential mortgage exposure means an exposure (other than a securitization exposure, equity exposure, statutory multifamily mortgage, or presold construction loan) that is:

(1)(i) An exposure that is primarily secured by a first or subsequent lien on one-to-four family residential property; or

(ii) An exposure with an original and outstanding amount of $1 million or less that is primarily secured by a first or subsequent lien on residential property that is not one-to-four family; and

(2) For purposes of calculating capital requirements under subpart E of this part, managed as part of a segment of exposures with homogeneous risk characteristics and not on an individual-exposure basis.

* * * * *

■ 15. Section 217.10 is amended by revising paragraph (c) introductory text to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(c) *Advanced approaches capital ratio calculations.* An advanced approaches Board-regulated institution that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution meets any of the criteria in § 217.100(b)(1).

* * * * *

■ 16. Section 217.22 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 217.22 Regulatory capital adjustments and deductions.

* * * * *

(b) * * *

(1) * * *

(iii) A Board-regulated institution must deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the Board-regulated institution's own credit risk. An advanced approaches Board-regulated institution must deduct the difference between its credit spread premium and the risk-free rate for derivatives that are liabilities as part of this adjustment.

* * * * *

■ 17. Section 217.100 is amended by revising paragraph (b)(1)(ii)(B) to read as follows:

§ 217.100 Purpose, applicability, and principle of conservatism

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Has consolidated total on-balance sheet foreign exposure on its most recent year-end Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable, equal to $10 billion or more (where total on-balance sheet foreign exposure equals total foreign countries cross-border claims on an ultimate-risk basis, plus total foreign countries claims on local residents on an ultimate-risk basis, plus total foreign countries fair value of foreign exchange and derivative products), calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report;

* * * * *

■ 18. Section 217.122 is amended by:

■ a. Revising paragraphs (a)(3) and (b)(1);

■ b. Adding paragraph (b)(2)(iii);

■ c. Revising paragraphs (b)(3) and (5) and (c)(1), (2), (5), and (6);
■ d. Redesignating paragraphs (c)(9) and (10) as paragraphs (c)(10) and (11), revising them, and, adding a new paragraph (c)(9); and
■ e. Revising paragraph (i)(5).

The revisions and additions read as follows:

§ 217.122 Qualification requirements.

(a) * * *

(3) Each Board-regulated institution must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements of this section and are appropriate given the Board-regulated institution's size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating a Board-regulated institution's risk-based capital requirements are located at any affiliate of the Board-regulated institution, the Board-regulated institution itself must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of long run experience with respect to its own credit risk and operational risk exposures.

(b) *Risk rating and segmentation systems for wholesale and retail exposures.* (1)(i) A Board-regulated institution must have an internal risk rating and segmentation system that accurately, reliably, and meaningfully differentiates among degrees of credit risk for the Board-regulated institution's wholesale and retail exposures. When assigning an internal risk rating, a Board-regulated institution may consider a third-party assessment of credit risk, provided that the Board-regulated institution's internal risk rating assignment does not rely solely on the external assessment.

(ii) If a Board-regulated institution uses multiple rating or segmentation systems, the Board-regulated institution's rationale for assigning an obligor or exposure to a particular system must be documented and applied in a manner that best reflects the obligor or exposure's level of risk. A Board-regulated institution must not inappropriately allocate obligors across systems to minimize regulatory capital requirements.

(iii) In assigning ratings to wholesale obligors and exposures, including loss severity ratings grades to wholesale exposures, and assigning retail exposures to retail segments, a Board-regulated institution must use all relevant and material information and ensure that the information is current.

(iv) When assigning an obligor to a PD rating or retail exposure to a PD segment, a Board-regulated institution must assess the obligor or retail borrower's ability and willingness to contractually perform, taking a conservative view of projected information.

(2) * * *

(iii) A Board-regulated institution must have an effective process to obtain and update in a timely manner relevant and material information on obligor and exposure characteristics that affect PD, LGD and EAD.

(3) For retail exposures:

(i) A Board-regulated institution must have an internal system that groups retail exposures into the appropriate retail exposure subcategory and groups the retail exposures in each retail exposure subcategory into separate segments with homogeneous risk characteristics that provide a meaningful differentiation of risk. The Board-regulated institution's system must identify and group in separate segments by subcategories exposures identified in § 217.131(c)(2)(ii) and (iii).

(ii) A Board-regulated institution must have an internal system that captures all relevant exposure risk characteristics, including borrower credit score, product and collateral types, as well as exposure delinquencies, and must consider cross-collateral provisions, where present.

(iii) The Board-regulated institution must review and, if appropriate, update assignments of individual retail exposures to segments and the loss characteristics and delinquency status of each identified risk segment. These reviews must occur whenever the Board-regulated institution receives new material information, but generally no less frequently than quarterly, and, in all cases, at least annually.

* * * * *

(5) The Board-regulated institution's internal risk rating system for wholesale exposures must provide for the review and update (as appropriate) of each obligor rating and (if applicable) each loss severity rating whenever the Board-regulated institution obtains relevant and material information on the obligor or exposure that affect PD, LGD and EAD, but no less frequently than annually.

(c) *Quantification of risk parameters for wholesale and retail exposures.* (1) The Board-regulated institution must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters on a consistent basis for the Board-regulated institution's wholesale and retail exposures.

(2) A Board-regulated institution's estimates of PD, LGD, and EAD must incorporate all relevant, material, and available data that is reflective of the Board-regulated institution's actual wholesale and retail exposures and of sufficient quality to support the determination of risk-based capital requirements for the exposures. In particular, the population of exposures in the data used for estimation purposes, and lending standards in use when the data were generated, and other relevant characteristics, should closely match or be comparable to the Board-regulated institution's exposures and standards. In addition, a Board-regulated institution must:

(i) Demonstrate that its estimates are representative of long run experience, including periods of economic downturn conditions, whether internal or external data are used;

(ii) Take into account any changes in lending practice or the process for pursuing recoveries over the observation period;

(iii) Promptly reflect technical advances, new data, and other information as they become available;

(iv) Demonstrate that the data used to estimate risk parameters support the accuracy and robustness of those estimates; and

(v) Demonstrate that its estimation technique performs well in out-of-sample tests whenever possible.

* * * * *

(5) The Board-regulated institution must be able to demonstrate which variables have been found to be statistically significant with regard to EAD. The Board-regulated institution's EAD estimates must reflect its specific policies and strategies with regard to account management, including account monitoring and payment processing, and its ability and willingness to prevent further drawdowns in circumstances short of payment default. The Board-regulated institution must have adequate systems and procedures in place to monitor current outstanding amounts against committed lines, and changes in outstanding amounts per obligor and obligor rating grade and per retail segment. The Board-regulated institution must be able to monitor outstanding amounts on a daily basis.

(6) At a minimum, PD estimates for wholesale obligors and retail segments must be based on at least five years of default data. LGD estimates for wholesale exposures must be based on at least seven years of loss severity data, and LGD estimates for retail segments must be based on at least five years of loss severity data. EAD estimates for

wholesale exposures must be based on at least seven years of exposure amount data, and EAD estimates for retail segments must be based on at least five years of exposure amount data. If the Board-regulated institution has relevant and material reference data that span a longer period of time than the minimum time periods specified above, the Board-regulated institution must incorporate such data in its estimates, provided that it does not place undue weight on periods of favorable or benign economic conditions relative to periods of economic downturn conditions.

* * * * *

(9) If a Board-regulated institution uses internal data obtained prior to becoming subject to this subpart E or external data to arrive at PD, LGD, or EAD estimates, the Board-regulated institution must demonstrate to the Board that the Board-regulated institution has made appropriate adjustments if necessary to be consistent with the definition of default in § 217.101. Internal data obtained after the Board-regulated institution becomes subject to this subpart E must be consistent with the definition of default in § 217.101.

(10) The Board-regulated institution must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(11) The Board-regulated institution must, at least annually, conduct a comprehensive review and analysis of reference data to the Board-regulated institution's exposures, quality of reference data to support PD, LGD, and EAD estimates, and consistency of reference data to the definition of default in § 217.101.

* * * * *

(i) * * *

(5) The Board-regulated institution must have an internal audit function or equivalent function that is independent of business-line management that at least annually:

(i) Reviews the Board-regulated institution's advanced systems and associated operations, including the operations of its credit function and estimations of PD, LGD, and EAD;

(ii) Assesses the effectiveness of the controls supporting the Board-regulated institution's advanced systems; and

(iii) Documents and reports its findings to the Board-regulated institution's board of directors (or a committee thereof).

* * * * *

■ 19. Section 217.131 is amended by:

■ a. Revising paragraphs (d)(5)(ii) and (iii); and

■ b. In paragraph (e)(3)(vi), removing ''§ 217.22(a)(7)'' and adding ''§ 217.22(d)'' in its place.

The revisions read as follows:

§ 217.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(d) * * *

(5) * * *

(ii) A national bank or Federal savings association may take into account the risk reducing effects of guarantees and credit derivatives in support of retail exposures in a segment when quantifying the PD and LGD of the segment. In doing so, a national bank or Federal savings association must consider all relevant available information.

(iii) Except as provided in paragraph (d)(6) of this section, a national bank or Federal savings association may take into account the risk reducing effects of collateral in support of a wholesale exposure when quantifying the LGD of the exposure, and may take into account the risk reducing effects of collateral in support of retail exposures when quantifying the PD and LGD of the segment. In order to do so, a national bank or Federal savings association must have established internal requirements for collateral management, legal certainty, and risk management processes.

* * * * *

■ 20. Section 217.132 is amended by:

■ a. In Table 1 to § 217.132, removing ''this section'' and adding ''§ 217.32'' in its place, wherever it appears;

■ b. Revising paragraphs (c)(1) and (d)(5)(iii)(B);

■ c. In paragraph (d)(7)(iv)(B), removing ''§ 217.131(b)(2)'' and adding ''§ 217.132(b)(2)'' in its place; and

■ d. In paragraph (d)(9)(ii), removing ''paragraph (e)(3)'' and adding ''paragraph (e)(6)'' in its place.

The revisions read as follows:

§ 217.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(c) *EAD for OTC derivative contracts*—(1) *OTC derivative contracts not subject to a qualifying master netting agreement.* A Board-regulated institution must determine the EAD for an OTC derivative contract that is not subject to a qualifying master netting agreement using the current exposure methodology in paragraph (c)(5) of this section or using the internal models methodology described in paragraph (d) of this section. A Board-regulated institution may reduce the EAD calculated according to paragraphs (c)(5) or (d) of this section by the credit valuation adjustment that the Board-regulated institution has recognized in its balance sheet valuation of any OTC derivative contracts in the netting set. For purposes of this paragraph (c), the credit valuation adjustment does not include any adjustments to common equity tier 1 capital attributable to changes in the fair value of the Board-regulated institution's liabilities that are due to changes in its own credit risk since the inception of the transaction with the counterparty.

* * * * *

(d) * * *

(5) * * *

(iii) * * *

(B) Twenty business days if the number of trades in a netting set exceeds 5,000 at any time during the previous quarter (except if the Board-regulated institution is calculating EAD for a cleared transaction under § 217.133) or contains one or more trades involving illiquid collateral or any derivative contract that cannot be easily replaced. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the margin period of risk, then the Board-regulated institution must use a margin period of risk for that netting set that is at least two times the minimum margin period of risk for that netting set. If the periodicity of the receipt of collateral is N-days, the minimum margin period of risk is the minimum margin period of risk under this paragraph (d) plus N minus 1. This period should be extended to cover any impediments to prompt re-hedging of any market risk.

* * * * *

■ 21. Section 217.133 is amended by:

■ a. In paragraph (b)(3)(i)(B), removing ''§ 217.132(b)(3)(i)(A)'' and adding ''§ 217.133(b)(3)(i)(A)'' in its place.

■ b. In paragraph (b)(4)(ii) removing ''§ 217.131'' and adding ''subparts E or F of this part, as applicable'' in its place.

■ c. Adding paragraph (c)(3)(iii); and

■ d. In paragraph (c)(4)(ii) removing ''§ 217.131'' and adding ''subparts E or F of this part, as applicable.'' in its place.

The revisions and additions read as follows:

§ 217.133 Cleared transactions.

* * * * *

(c) * * *

(3) * * *

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member Board-regulated institution may apply a risk weight of 0 percent to the trade exposure amount

for a cleared transaction with a CCP where the clearing member Board-regulated institution is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 217.3(a), and the clearing member Board-regulated institution is not obligated to reimburse the clearing member client in the event of the CCP default.

* * * * *

§ 217.136 [Amended]

■ 22. Section 217.136 is amended by:

■ a. In paragraph (e)(2)(i) removing ''§ 217.135(e)(1) and (e)(2)'' and adding ''§ 217.136(e)(1) and (2)'' in its place; and

■ b. In paragraph (e)(2)(ii) removing ''§§ 217.135(e)(1) and (e)(2)'' and adding ''§ 217.136(e)(1) and (2)'' in its place.

■ 23. Section 217.172 is amended by revising paragraph (d), as added at 79 FR 57746, September 26, 2014, effective January 1, 2015, to read as follows:

§ 217.172 Disclosure requirements.

* * * * *

(d)(1) A Board-regulated institution that meets any of the criteria in § 217.100(b)(1) before January 1, 2015, must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part, beginning with the first quarter in 2015. This disclosure requirement applies without regard to whether the Board-regulated institution has completed the parallel run process and received notification from the Board pursuant to § 217.121(d).

(2) A Board-regulated institution that meets any of the criteria in § 217.100(b)(1) on or after January 1, 2015, must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution becomes an advanced approaches Board-regulated institution. This disclosure requirement applies without regard to whether the Board-regulated institution has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d).

■ 24. Section 217.173 is amended by:

■ a. Designating paragraph (a) introductory text, as revised at 79 FR 57746, September 26, 2014, effective January 1, 2015, as (a)(1) and revising it;

■ b. Adding paragraphs (a)(2) and (3);

■ c. Revising the entry for (a)(1) in Table 6 to § 217.173; and

■ d. Revising the entry for (i)(2) in Table 9 to § 217.173.

The revisions and additions read as follows:

§ 217.173 Disclosures by certain advanced approaches Board-regulated institutions.

(a)(1) An advanced approaches Board-regulated institution described in § 217.172(b) must make the disclosures described in Tables 1 through 12 to § 217.173.

(2) An advanced approaches Board-regulated institution that is required to publicly disclose its supplementary leverage ratio pursuant to § 217.172(d) must make the disclosures required under Table 13 to § 217.173, unless the Board-regulated institution is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosures requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

(3) The disclosures described in Tables 1 through 12 to § 217.173 must be made publicly available for twelve consecutive quarters beginning on January 1, 2014, or a shorter period, as applicable, for the quarters after the Board-regulated institution has completed the parallel run process and received notification from the Board pursuant to section 121(d) of subpart E of this part. The disclosures described in Table 13 to § 217.173 must be made publicly available for twelve consecutive quarters beginning on January 1, 2015, or a shorter period, as applicable, for the quarters after the Board-regulated institution becomes subject to the disclosure of the supplementary leverage ratio pursuant to § 217.172(d).

* * * * *

TABLE 6 TO § 217.173—CREDIT RISK: DISCLOSURES FOR PORTFOLIOS SUBJECT TO IRB RISK-BASED CAPITAL FORMULA

Qualitative disclosures	(a)	* * * (1) Structure of internal rating systems and if the Board-regulated institution considers external ratings, the relation between internal and external ratings;
* * * * * * *		

* * * * *

TABLE 9 TO § 217.173—SECURITIZATION

Quantitative Disclosures	* * *	
* * * * * * *		
	(i)	* * * (2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any: (A) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and (B) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.
* * * * * * *		

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

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

PART 324—CAPITAL ADEQUACY

■ 25. The authority citation for part 324 continues to read as follows:

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

■ 26. Section 324.2 is amended by revising the definition of ''Residential mortgage exposure'' to read as follows:

§ 324.2 Definitions.

* * * * *

Residential mortgage exposure means an exposure (other than a securitization exposure, equity exposure, statutory multifamily mortgage, or presold construction loan) that is:

(1)(i) An exposure that is primarily secured by a first or subsequent lien on one-to-four family residential property; or

(ii) An exposure with an original and outstanding amount of $1 million or less that is primarily secured by a first or subsequent lien on residential property that is not one-to-four family; and

(2) For purposes of calculating capital requirements under subpart E of this part, managed as part of a segment of exposures with homogeneous risk characteristics and not on an individual-exposure basis.

* * * * *

■ 27. Section 324.10 is amended by revising paragraph (c) introductory text to read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(c) *Advanced approaches capital ratio calculations.* An advanced approaches FDIC-supervised institution that has completed the parallel run process and received notification from the FDIC pursuant to § 324.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches FDIC-supervised institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution meets any of the criteria in § 324.100(b)(1).

* * * * *

■ 28. Section 324.22 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 324.22 Regulatory capital adjustments and deductions.

* * * * *

(b) * * *

(1) * * *

(iii) An FDIC-supervised institution must deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the FDIC-supervised institution's own credit risk. An advanced approaches FDIC-supervised institution must deduct the difference between its credit spread premium and the risk-free rate for derivatives that are liabilities as part of this adjustment.

* * * * *

■ 29. Section 324.100 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 324.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) * * *

(1) * * *

(ii) Has consolidated total on-balance sheet foreign exposure on its most recent year-end Call Report equal to $10 billion or more (where total on-balance sheet foreign exposure equals total foreign countries cross-border claims on an ultimate-risk basis, plus total foreign countries claims on local residents on an ultimate-risk basis, plus total foreign countries fair value of foreign exchange and derivative products), calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report;

* * * * *

■ 30. Section 324.122 is amended by:

■ a. Revising paragraphs (a)(3) and (b)(1);

■ b. Adding paragraph (b)(2)(iii);

■ c. Revising paragraphs (b)(3) and (5) and (c)(1), (2), (5), and (6);

■ d. Redesignating paragraphs (c)(9) and (10) as paragraphs (c)(10) and (11), revising them, and adding a new paragraph (c)(9).

■ e. Revising paragraph (i)(5).

The revisions and additions read as follows:

§ 324.122 Qualification requirements.

(a) * * *

(3) Each FDIC-supervised institution must have an appropriate infrastructure with risk measurement and management processes that meet the qualification requirements of this section and are appropriate given the FDIC-supervised institution's size and level of complexity. Regardless of whether the systems and models that generate the risk parameters necessary for calculating an FDIC-supervised institution's risk-based capital requirements are located at any affiliate of the FDIC-supervised institution, the FDIC-supervised institution itself must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of long run experience with respect to its own credit risk and operational risk exposures.

(b) *Risk rating and segmentation systems for wholesale and retail exposures.* (1)(i) An FDIC-supervised institution must have an internal risk rating and segmentation system that accurately, reliably, and meaningfully differentiates among degrees of credit risk for the FDIC-supervised institution's wholesale and retail exposures. When assigning an internal risk rating, an FDIC-supervised institution may consider a third-party assessment of credit risk, provided that the FDIC-supervised institution's internal risk rating assignment does not rely solely on the external assessment.

(ii) If an FDIC-supervised institution uses multiple rating or segmentation systems, the FDIC-supervised institution's rationale for assigning an obligor or exposure to a particular system must be documented and applied in a manner that best reflects the obligor or exposure's level of risk. An FDIC-supervised institution must not inappropriately allocate obligors across systems to minimize regulatory capital requirements.

(iii) In assigning ratings to wholesale obligors and exposures, including loss severity ratings grades to wholesale exposures, and assigning retail exposures to retail segments, an FDIC-supervised institution must use all relevant and material information and ensure that the information is current.

(iv) When assigning an obligor to a PD rating or retail exposure to a PD segment, an FDIC-supervised institution must assess the obligor or retail borrower's ability and willingness to contractually perform, taking a conservative view of projected information.

(2) * * *

(iii) An FDIC-supervised institution must have an effective process to obtain and update in a timely manner relevant and material information on obligor and exposure characteristics that affect PD, LGD and EAD.

(3) For retail exposures:

(i) An FDIC-supervised institution must have an internal system that groups retail exposures into the appropriate retail exposure subcategory and groups the retail exposures in each retail exposure subcategory into separate segments with homogeneous risk characteristics that provide a meaningful differentiation of risk. The FDIC-supervised institution's system must identify and group in separate segments by subcategories exposures identified in § 324.131(c)(2)(ii) and (iii).

(ii) An FDIC-supervised institution must have an internal system that captures all relevant exposure risk characteristics, including borrower credit score, product and collateral types, as well as exposure delinquencies, and must consider cross-collateral provisions, where present.

(iii) The FDIC-supervised institution must review and, if appropriate, update assignments of individual retail exposures to segments and the loss characteristics and delinquency status of each identified risk segment. These reviews must occur whenever the FDIC-supervised institution receives new material information, but generally no less frequently than quarterly, and, in all cases, at least annually.

* * * * *

(5) The FDIC-supervised institution's internal risk rating system for wholesale exposures must provide for the review and update (as appropriate) of each obligor rating and (if applicable) each loss severity rating whenever the FDIC-supervised institution obtains relevant and material information on the obligor or exposure that affect PD, LGD and EAD, but no less frequently than annually.

(c) *Quantification of risk parameters for wholesale and retail exposures.* (1) The FDIC-supervised institution must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters on a consistent basis for the FDIC-supervised institution's wholesale and retail exposures.

(2) An FDIC-supervised institution's estimates of PD, LGD, and EAD must incorporate all relevant, material, and available data that is reflective of the FDIC-supervised institution's actual wholesale and retail exposures and of sufficient quality to support the determination of risk-based capital requirements for the exposures. In particular, the population of exposures in the data used for estimation purposes, and lending standards in use when the data were generated, and other relevant characteristics, should closely match or be comparable to the FDIC-supervised institution's exposures and standards. In addition, an FDIC-supervised institution must:

(i) Demonstrate that its estimates are representative of long run experience, including periods of economic downturn conditions, whether internal or external data are used;

(ii) Take into account any changes in lending practice or the process for pursuing recoveries over the observation period;

(iii) Promptly reflect technical advances, new data, and other information as they become available;

(iv) Demonstrate that the data used to estimate risk parameters support the accuracy and robustness of those estimates; and

(v) Demonstrate that its estimation technique performs well in out-of-sample tests whenever possible.

* * * * *

(5) The FDIC-supervised institution must be able to demonstrate which variables have been found to be statistically significant with regard to EAD. The FDIC-supervised institution's EAD estimates must reflect its specific policies and strategies with regard to account management, including account monitoring and payment processing, and its ability and willingness to prevent further drawdowns in circumstances short of payment default. The FDIC-supervised institution must have adequate systems and procedures in place to monitor current outstanding amounts against committed lines, and changes in outstanding amounts per obligor and obligor rating grade and per retail segment. The FDIC-supervised institution must be able to monitor outstanding amounts on a daily basis.

(6) At a minimum, PD estimates for wholesale obligors and retail segments must be based on at least five years of default data. LGD estimates for wholesale exposures must be based on at least seven years of loss severity data, and LGD estimates for retail segments must be based on at least five years of loss severity data. EAD estimates for wholesale exposures must be based on at least seven years of exposure amount data, and EAD estimates for retail segments must be based on at least five years of exposure amount data. If the FDIC-supervised institution has relevant and material reference data that span a longer period of time than the minimum time periods specified above, the FDIC-supervised institution must incorporate such data in its estimates, provided that it does not place undue weight on periods of favorable or benign economic conditions relative to periods of economic downturn conditions.

* * * * *

(9) If an FDIC-supervised institution uses internal data obtained prior to becoming subject to this subpart E or external data to arrive at PD, LGD, or EAD estimates, the FDIC-supervised institution must demonstrate to the FDIC that the FDIC-supervised institution has made appropriate adjustments if necessary to be consistent with the definition of default in § 324.101. Internal data obtained after the FDIC-supervised institution becomes subject to this subpart E must be consistent with the definition of default in § 324.101.

(10) The FDIC-supervised institution must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(11) The FDIC-supervised institution must, at least annually, conduct a comprehensive review and analysis of reference data to the FDIC-supervised institution's exposures, quality of reference data to support PD, LGD, and EAD estimates, and consistency of reference data to the definition of default in § 324.101.

* * * * *

(i) * * *

(5) The FDIC-supervised institution must have an internal audit function or equivalent function that is independent of business-line management that at least annually:

(i) Reviews the FDIC-supervised institution's advanced systems and associated operations, including the operations of its credit function and estimations of PD, LGD, and EAD;

(ii) Assesses the effectiveness of the controls supporting the FDIC-supervised institution's advanced systems; and

(iii) Documents and reports its findings to the FDIC-supervised institution's board of directors (or a committee thereof).

* * * * *

■ 31 Section 324.131 is amended by:

■ a. Revising paragraph (d)(5)(ii) and (iii); and

■ b. In paragraph (e)(3)(vi), removing ''§ 324.22(a)(7)'' and adding ''§ 324.22(d)'' in its place.

The revisions read as follows:

§ 324.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(d) * * *
(5) * * *
(ii) An FDIC-supervised institution may take into account the risk reducing effects of guarantees and credit derivatives in support of retail exposures in a segment when quantifying the PD and LGD of the segment. In doing so, an FDIC-supervised institution must consider all relevant available information.
(iii) Except as provided in paragraph (d)(6) of this section, an FDIC-supervised institution may take into account the risk reducing effects of collateral in support of a wholesale exposure when quantifying the LGD of the exposure, and may take into account the risk reducing effects of collateral in support of retail exposures when quantifying the PD and LGD of the segment. In order to do so, an FDIC-supervised institution must have established internal requirements for collateral management, legal certainty, and risk management processes.
* * * * *

■ 32. Section 324.132 is amended by:
■ a. In Table 1 to § 324.132, removing ''this section'' and adding ''§ 324.32'' in its place, wherever it appears;
■ b. Revising paragraphs (c)(1) and (d)(5)(iii)(B);
■ c. In paragraph (d)(7)(iv)(B), removing ''§ 324.131(b)(2)'' and adding ''§ 324.132(b)(2)'' in its place; and
■ d. In paragraph (d)(9)(ii), removing ''paragraph (e)(3)'' and adding ''paragraph (e)(6)'' in its place.
The revisions read as follows:

§ 324.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

* * * * *

(c) *EAD for OTC derivative contracts*—(1) *OTC derivative contracts not subject to a qualifying master netting agreement.* An FDIC-supervised institution must determine the EAD for an OTC derivative contract that is not subject to a qualifying master netting agreement using the current exposure methodology in paragraph (c)(5) of this section or using the internal models methodology described in paragraph (d) of this section. An FDIC-supervised institution may reduce the EAD calculated according to paragraphs (c)(5) or (d) of this section by the credit valuation adjustment that the FDIC-supervised institution has recognized in its balance sheet valuation of any OTC derivative contracts in the netting set. For purposes of this paragraph (c), the credit valuation adjustment does not include any adjustments to common equity tier 1 capital attributable to changes in the fair value of the FDIC-supervised institution's liabilities that are due to changes in its own credit risk since the inception of the transaction with the counterparty.
* * * * *
(d) * * *
(5) * * *
(iii) * * *
(B) Twenty business days if the number of trades in a netting set exceeds 5,000 at any time during the previous quarter (except if the FDIC-supervised institution is calculating EAD for a cleared transaction under § 324.133) or contains one or more trades involving illiquid collateral or any derivative contract that cannot be easily replaced. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the margin period of risk, then the FDIC-supervised institution must use a margin period of risk for that netting set that is at least two times the minimum margin period of risk for that netting set. If the periodicity of the receipt of collateral is N-days, the minimum margin period of risk is the minimum margin period of risk under this paragraph (d) plus N minus 1. This period should be extended to cover any impediments to prompt re-hedging of any market risk.
* * * * *

■ 33. Section 324.133 is amended by:
■ a. In paragraph (b)(3)(i)(B), removing ''§ 324.132(b)(3)(i)(A)'' and adding ''§ 324.133(b)(3)(i)(A)'' in its place;
■ b. In paragraphs (b)(4)(ii) removing ''§ 324.131'' and adding ''subparts E or F of this part, as applicable'' in its place;
■ c. Adding paragraph (c)(3)(iii); and
■ d. In paragraph (c)(4)(ii) removing ''§ 324.131'' and adding ''subparts E or F of this part, as applicable'' in its place.
The addition reads as follows:

§ 324.133 Cleared transactions.

* * * * *
(c) * * *
(3) * * *
(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member FDIC-supervised institution may apply a risk weight of 0 percent to the trade exposure amount for a cleared transaction with a CCP where the clearing member FDIC-supervised institution is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in § 324.3(a), and the clearing member FDIC-supervised institution is not obligated to reimburse the clearing member client in the event of the CCP default.
* * * * *

§ 324.136 [Amended]

■ 34. Section 324.136 is amended by,
■ a. In paragraph (e)(2)(i) removing ''§ 324.135(e)(1) and (e)(2)'' and adding ''§ 324.136(e)(1) and (2)'' in its place; and
■ b. In paragraph (e)(2)(ii), removing ''§§ 324.135(e)(1) and (e)(2)'' and adding ''§ 324.136(e)(1) and (2)'' in its place.
■ 34. Section 324.172 is amended by revising paragraphs (d), as added at 79 FR 57750, September 26, 2014, effective January 1, 2015, to read as follows:

§ 324.172 Disclosure requirements.

* * * * *

(d)(1) An FDIC-supervised institution that meets any of the criteria in § 324.100(b)(1) before January 1, 2015, must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part, beginning with the first quarter in 2015. This disclosure requirement applies without regard to whether the FDIC-supervised institution has completed the parallel run process and received notification from the FDIC pursuant to § 324.121(d).
(2) An FDIC-supervised institution that meets any of the criteria in § 324.100(b)(1) on or after January 1, 2015, must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution becomes an advanced approaches FDIC-supervised institution. This disclosure requirement applies without regard to whether the FDIC-supervised institution has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d).
■ 35. Section 324.173 is amended by:
■ a. Designating paragraph (a), as revised at 79 FR 57750, September 26, 2014, effective January 1, 2015, as paragraph (a)(1) and revising it;
■ b. Adding paragraphs (a)(2) and (3);
■ c. Revising the entry for (a)(1) in Table 6 to § 324.173; and
■ d. Revising the entry for (i)(2) in Table 9 to § 324.173.
The revisions and additions read as follows:

§ 324.173 Disclosures by certain advanced approaches FDIC-supervised institutions.

(a)(1) An advanced approaches FDIC-supervised institution described in § 324.172(b) must make the disclosures described in Tables 1 through 12 to § 324.173.

(2) An advanced approaches FDIC-supervised institution that is required to publicly disclose its supplementary leverage ratio pursuant to § 324.172(d) must make the disclosures required under Table 13 to § 324.173, unless the FDIC-supervised institution is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosures requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

(3) The disclosures described in Tables 1 through 12 to § 324.173 must be made publicly available for twelve consecutive quarters beginning on January 1, 2014, or a shorter period, as applicable, for the quarters after the FDIC-supervised institution has completed the parallel run process and received notification from the FDIC pursuant to section 121(d) of subpart E of this part. The disclosures described in Table 13 to § 324.173 must be made publicly available for twelve consecutive quarters beginning on January 1, 2015, or a shorter period, as applicable, for the quarters after the FDIC-supervised institution becomes subject to the disclosure of the supplementary leverage ratio pursuant to § 324.172(d).

* * * * *

TABLE 6 TO § 324.173—CREDIT RISK: DISCLOSURES FOR PORTFOLIOS SUBJECT TO IRB RISK-BASED CAPITAL FORMULA

Qualitative disclosures	(a)	* * * (1) Structure of internal rating systems and if the national bank or the FDIC-supervised institution considers external ratings, the relation between internal and external ratings; * * *

* * * * * * *

* * * * *

TABLE 9 TO § 324.173—SECURITIZATION

Quantitative disclosures	* * *	* * *	
	(i)	* * *	
			(2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any: (A) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and (B) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.

* * * * * * *

* * * * *

Dated: November 18, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, December 2, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 18th day of November, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–28690 Filed 12–17–14; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1505]

RIN 7100 AE–26

Risk-Based Capital Guidelines: Implementation of Capital Requirements for Global Systemically Important Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is inviting public comment on a framework to establish risk-based capital surcharges for the largest, most interconnected U.S.-based bank holding companies pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposal is based upon the international standard adopted by the Basel Committee on Banking Supervision, modified to reflect systemic risk concerns specific to the funding structures of large U.S. bank holding companies.

The proposed framework would require a U.S. top-tier bank holding company with $50 billion or more in total consolidated assets to calculate a measure of its systemic importance and would identify a subset of those companies as global systemically important bank holding companies based on that measure. A global systemically important bank holding company would be subject to a risk-based capital surcharge that would increase its capital conservation buffer under the Board's regulatory capital rule. The proposed framework would be phased in beginning on January 1, 2016 through year-end 2018, becoming fully effective on January 1, 2019. The proposal would also revise the terminology used to identify the firms subject to the enhanced supplementary leverage ratio standards to ensure consistency of the scopes of application of both rulemakings.

DATES: Comments must be received no later than March 2, 2015.

ADDRESSES: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1505 and RIN 7100 AE–16, by any of the following methods:

- *Agency Web site: www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert de V. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP—500 of the Board's Martin Building (20th and C Streets NW., Washington, DC 20551) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Anna Lee Hewko, Deputy Associate Director, (202) 530–6260, Ann McKeehan, Senior Supervisory Financial Analyst, (202) 973–6903, Jordan Bleicher, Senior Supervisory Financial Analyst, (202) 973–6123, or Holly Kirkpatrick, Supervisory Financial Analyst, (202) 452–2796, Division of Banking Supervision and Regulation, or Christine Graham, Counsel, (202) 452–3005, or Mark Buresh, Attorney, (202) 452–5270, Legal Division. Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
A. Background
B. Dodd-Frank Act
C. Overview of the Proposal
D. Integrated Set of Prudential Standards
E. Global Framework
II. Description of the Proposal To Measure and Impose Capital Requirements Based Upon Global Systemic Importance
A. Identification of a GSIB
B. Using Systemic Indicators Reported on the FR Y–15
C. Computing the Applicable GSIB Surcharge
D. Augmentation of the Capital Conservation Buffer
E. Implementation and Timing
F. Periodic Review and Refinement of the Proposal
III. Indicators of Global Systemic Risk
A. Size
B. Interconnectedness
C. Substitutability
D. Complexity
E. Cross-jurisdictional Activity
F. Use of Short-term Wholesale Funding
IV. Amendments to the FR Y–15
V. Modifications to Related Rules
VI. Regulatory Analysis
A. Paperwork Reduction Act
B. Regulatory Flexibility Act
C. Plain Language

I. Introduction

A. Background

The 2007–2008 financial crisis demonstrated that certain U.S. financial companies had grown so large, leveraged, and interconnected that their failure could pose a threat to financial stability in the United States and globally. The sudden collapse and near-collapse of major financial companies were among the most destabilizing events of the crisis. As a result, significant public sector intervention was needed to reduce the impact of, or prevent, the failure of these companies and the attendant consequences for the broader financial system. The crisis demonstrated that supervisors and other relevant authorities needed to take additional steps to prevent financial vulnerabilities from spreading among firms in a manner that could undermine national and global financial stability. In response, U.S. authorities have undertaken a comprehensive reform of financial regulation to enhance their ability to monitor and address threats to financial stability, strengthen the prudential oversight and resolvability of systemically important financial institutions, and improve the capacity of financial markets and infrastructures to absorb shocks.

Despite those efforts, a perception persists in the markets that some companies remain too big to fail, which poses a significant threat to the financial system. The perception of too big to fail reduces incentives of shareholders, creditors, and counterparties of these companies to discipline excessive risk-taking by these companies and produces competitive distortions because these companies can often fund themselves at a lower cost than other companies. This distortion is unfair to smaller companies, damages fair competition, and may artificially encourage further consolidation and concentration in the financial system.

The financial crisis also revealed dangers that can emerge as a result of firms' reliance on short-term wholesale funding. Short-term wholesale funding is used by a variety of financial firms, including commercial banks and broker-dealers, and can take many forms, including unsecured commercial paper, asset-backed commercial paper, wholesale certificates of deposits, and securities financing transactions. During normal times, short-term wholesale funding helps to satisfy investor demand for safe and liquid investments, lower funding costs for borrowers, and support the functioning of the financial markets. During periods of stress, however, reliance on short-term wholesale funding can leave firms vulnerable to runs that undermine financial stability.

When short-term creditors lose confidence in a firm or believe other short-term creditors may lose confidence in that firm, those creditors have a strong incentive to withdraw funding quickly before withdrawals by other creditors drain the firm of its liquid assets. To meet its obligations, the borrowing firm may be required to rapidly sell less liquid assets, which it may be able to do only at fire sale prices that deplete the seller's capital and drive down asset prices across the market. In a post-default scenario, fire sale externalities could result if the defaulted firm's creditors seize and rapidly liquidate assets the defaulted firm has posted as collateral. Financial distress can spread among firms as a result of counterparty relationships or because of perceived similarities among firms, forcing firms to rapidly liquidate assets in a manner that places the financial system as a whole under significant strain.

B. Dodd-Frank Act

In the wake of the financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in order to mitigate the risk to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions.[1] Section 165 of the Dodd-Frank Act directs the Board to establish

[1] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

enhanced prudential standards for bank holding companies with $50 billion or more in total consolidated assets and for nonbank financial companies the Financial Stability Oversight Council (Council) has designated for supervision by the Board (nonbank financial companies supervised by the Board).[2] The enhanced prudential standards include heightened risk-based capital requirements, leverage limits, liquidity requirements, single-counterparty credit limits, stress testing requirements, and risk management requirements.[3] These standards must be more stringent than those standards applicable to other bank holding companies and to nonbank financial companies that do not present similar risks to U.S. financial stability.[4] The standards must also increase in stringency based on several factors, including the size and risk characteristics of a company subject to the rule, and the Board must take into account the difference among bank holding companies and nonbank financial companies based on the same factors.[5] Section 165 also permits the Board to establish other prudential standards in addition to the mandatory standards, including three enumerated standards—a contingent capital requirement, enhanced public disclosures, and short-term debt limits—and any ''other prudential standards'' that the Board determines are ''appropriate.''

C. Overview of the Proposal

Pursuant to its authority to establish enhanced risk-based capital standards under section 165 of the Dodd-Frank Act, the Board is proposing to impose risk-based capital surcharges (GSIB surcharges) upon U.S. bank holding companies that are identified as global systemically important banking organizations (GSIBs). First, the proposal would establish a methodology to determine whether a U.S. top-tier bank holding company is a GSIB based on five broad categories that are believed to be good proxies for, and correlated with, systemic importance—size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. If a bank holding company's score as calculated under the proposed methodology is 130 basis points or greater, then such a bank holding company would be designated as a GSIB. Under the proposed methodology, eight large U.S. bank holding companies currently would be identified as GSIBs.

A firm that is designated as a GSIB under the proposed methodology would calculate a GSIB surcharge using two methods. The first method would be based on the sum of a firm's systemic indicator scores reflecting its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity (method 1). The second method would be based on the sum of the firm's systemic indicator scores reflecting its size, interconnectedness, cross-jurisdictional activity, and complexity, as well as a measure of use of short-term wholesale funding, but would exclude the systemic indicator scores reflecting the firm's substitutability (method 2), and would generally result in higher surcharges as compared to method 1. A GSIB's surcharge would be the higher of the two surcharges determined under the two methods.

The proposal would amend the Board's regulatory capital rule to increase a GSIB's capital conservation buffer by the amount of its GSIB surcharge.[6] For example, under the proposal, a bank holding company subject to a GSIB surcharge of 2.5 percent would have a capital conservation buffer of 5.0 percent, which is the sum of the 2.5 percent capital conservation buffer and its GSIB surcharge.[7] The Board is proposing that the GSIB surcharge become effective pursuant to the same timeline as the capital conservation buffer, which will be phased in beginning in 2016 at a rate of 25 percent per year and become fully effective on January 1, 2019.[8]

The proposed GSIB surcharge is designed to reduce a GSIB's probability of default such that a GSIB's expected systemic impact is approximately equal to that of a large, non-systemic bank holding company. Distress at a GSIB would have substantially greater negative consequences on the financial system than the failure of other bank holding companies that may be large or interconnected, but that do not have comparable systemic risk profiles. Distress at a GSIB can lead to a domino effect, whereby a GSIB's counterparties are placed under severe strain when the GSIB does not meet its financial obligations. The inability of a counterparty of a GSIB to meet its obligations leads, in turn, to severe strains at its significant counterparties, leading to more firms being unable to fulfill their contractual obligations. In addition, distress at a GSIB can lead to fire sales in asset markets, when a GSIB engages in distressed sales in an effort to obtain needed liquidity. The sudden increase in market supply of assets drives down prices. This effect is transmitted not only to firms that must sell assets to meet immediate liquidity needs but, because of margin calls and mark-to-market accounting requirements, to many other firms as well. There can also be information contagion effects, where market participants conclude from a GSIB's distress that other firms holding similar assets or following similar business models are likely to also be facing distress. Taken together, these impacts indicate that the failure of a GSIB could affect not only those firms closely connected to the GSIB, but also the broader financial system. Because the systemic loss given default of a GSIB is much greater than that of a large, non-systemic bank holding company, its probability of default must be significantly lower than that of a large, non-systemic bank holding company in order to equalize the expected systemic impact of its failure or distress.

The proposed GSIB surcharge increases in stringency based on a GSIB's risk characteristics, including size, complexity, interconnectedness, cross-jurisdictional activity, and use of short-term wholesale funding. In this way, the calibration is designed to induce a GSIB to reduce its risk of failure, internalize the negative externalities it poses, and correct for competitive distortions created by the perception that it may be too big to fail. In addition, the proposed GSIB surcharge would place additional private capital at risk before the Federal Deposit Insurance Fund or the Federal government's resolution mechanisms would be called upon and would reduce the likelihood of economic disruptions as a result of financial distress at these institutions.

D. Integrated Set of Prudential Standards

The proposed GSIB surcharge is one of several enhanced prudential standards that the Board has developed pursuant to section 165 of the Dodd Frank Act. In November 2011, the Board and the Federal Deposit Insurance Corporation (FDIC) issued a joint final rule that would require bank holding

[2] *See* 12 U.S.C. 5365.

[3] *Id.*

[4] *See* 12 U.S.C. 5365(a)(1)(A).

[5] *See* 12 U.S.C. 5365(a)(1)(B). Under section 165(a)(1)(B) of the Dodd-Frank Act, the enhanced prudential standards must increase in stringency based on the considerations listed in section 165(b)(3).

[6] *See* 12 CFR 217.11. Implementation of the GSIB surcharge as an expansion of the capital conservation buffer is also the method of implementation chosen by the BCBS in the BCBS global framework. *See* paragraph 129 of the Basel III framework and paragraph 46 of the BCBS Revised Document.

[7] This example assumes that any applicable countercyclical capital buffer amount is zero.

[8] 12 CFR 217.300(a).

companies and foreign banking organizations with $50 billion or more in total consolidated assets and nonbank financial companies designated by the Council for supervision by the Board to submit annual resolution plans.[9] Also in November 2011, the Board issued a final rule requiring a bank holding company to submit an annual capital plan to the Board in which it demonstrates the ability to meet the Board's minimum regulatory capital requirements over a range of stressed conditions.[10] In October 2012, the Board issued two final rules implementing stress testing requirements for certain bank holding companies, state member banks, and savings and loan holding companies pursuant to sections 165(i)(1) and (2) of the Dodd-Frank Act.[11] In February 2014, the Board issued a final rule establishing liquidity and risk management standards for U.S. bank holding companies and capital, stress testing, liquidity, and risk management standards for foreign banking organizations.[12] Finally, in September 2014, the Board, the FDIC, and the Office of the Comptroller of the Currency (OCC) issued the liquidity coverage ratio rule (LCR rule) that creates for the first time a standardized minimum liquidity coverage ratio requirement for the largest, most complex banking organizations.[13]

In addition, the Board has adopted measures to strengthen the capital regulations applicable to all banking organizations. In July 2013, the Board, the FDIC, and the OCC adopted a final rule revising the regulatory capital rule to increase the quality and quantity of regulatory capital that must be maintained by banking organizations, and to improve risk coverage by more accurately measuring the risk inherent in exposures.[14] The final rule also established a capital conservation buffer that incentivizes banking organizations to hold capital in excess of regulatory minimums by imposing increasingly stringent limits on capital distributions and certain discretionary bonus payments as the banking organization's buffer falls below specified thresholds. For the case of banking organizations subject to the advanced approaches rule, the regulatory capital rule also includes a mechanism for increasing the capital conservation buffer when credit markets overheat (through the countercyclical buffer), and a supplementary leverage ratio that takes into account both on- and off-balance sheet exposures.[15] In April 2014, the Board, the FDIC, and the OCC issued enhanced supplementary leverage ratio standards for the largest, most complex bank holding companies (*i.e.,* the bank holding companies that would be identified as GSIBs under the proposed rule) and their insured depository institution subsidiaries, under which such bank holding companies must maintain a supplementary leverage ratio of 5 percent or more in order to avoid limitations on distributions and certain discretionary bonus payments, and such insured depository institution subsidiaries must maintain a supplementary leverage ratio of 6 percent or more to be ''well capitalized'' under the agencies' prompt corrective action regulations.[16]

The Board continues to develop additional enhanced standards that will mitigate risks to U.S. financial stability posed by certain banking organizations.

E. Global Framework

The proposed GSIB surcharge is consistent with global efforts to address the financial stability risks posed by the largest, most interconnected financial institutions. Following the financial crisis, the Group of Twenty Finance Ministers and Central Bank Governors (G–20) requested that the Financial Stability Board (FSB) develop a policy framework to address the systemic and moral hazard risks associated with systemically important financial institutions, and in particular, global systemically important financial institutions.[17] In November 2010, the G–20 endorsed an FSB policy framework for addressing these institutions, one element of which is a capital surcharge for global systemically important financial institutions.[18] In November 2011, the FSB published an integrated set of policy measures to address the systemic and moral hazard risks associated with global systemically important financial institutions, intended to mitigate the impact of the failure of a global systemically important financial institution and reduce any competitive funding advantages these firms may have as a result of the perception that they are too big to fail.[19] The FSB identified the global systemically important financial institutions using an assessment methodology and framework developed by the Basel Committee on Banking Supervision (BCBS framework).[20] The BCBS calculates global firms' scores and releases the lists of global systemically important financial institutions, including global systemically important

[9] 12 CFR part 243.

[10] *See* 12 CFR 225.8. *See* 76 FR 74631 (December 1, 2011); 79 FR 64026 (October 27, 2014); and 79 FR 13498 (March 11, 2014).

[11] *See* 12 U.S.C. 5365(i)(1) and 12 CFR 252, subparts E and F. *See* 77 FR 62378 (October 12, 2012); 79 FR 64026 (October 27, 2014); and 79 FR 13498 (March 11, 2014).

[12] *See* 79 FR 17240 (March 27, 2014).

[13] 79 FR 61440 (October 10, 2014).

[14] The Board and the OCC issued a joint final rule on October 11, 2013 (78 FR 62018) and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). In April 2014, the FDIC adopted the interim final rule as a final rule with no substantive changes. 79 FR 20754 (April 14, 2014).

[15] *Id.* at 62170–62172.

[16] *See* 79 FR 24528 (May 1, 2014). The supplementary leverage ratio comes into effect on January 1, 2018 and applies to top-tier U.S. bank holding companies with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody (covered BHCs), as well as insured depository institution subsidiaries of the covered BHCs. As discussed in section IV of this preamble, the proposal would amend the supplementary leverage ratio rule to ensure consistency of the scopes of application for the supplementary leverage ratio rule and the GSIB proposal.

[17] The G–20 was established in 1999 to bring together industrialized and developing economies to discuss key issues in the global economy. Members include finance ministers and central bank governors of 19 countries (Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea, Turkey, U.K., and U.S.) and the European Union. The FSB was established to coordinate at the international level the work of national financial authorities and international standard setting bodies and to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies in the interest of financial stability. The FSB brings together national authorities responsible for financial stability in 24 countries and jurisdictions, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts.

[18] For additional background on the November 2010 initiative, see *www.financialstabilityboard.org/press/pr_101111a.pdf.*

[19] *See* ''Policy Measures to Address Systemically Important Financial Institutions'' available at *www.financialstabilityboard.org/publications/r_111104bb.pdf.*

[20] The Basel Committee on Banking Supervision (BCBS) is a committee of banking supervisory authorities established by the central bank Governors of the Group of Ten countries in 1975. The committee's membership consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. It usually meets at the Bank for International Settlements (BIS) in Basel, Switzerland, where its permanent Secretariat is located. *See* ''Global systemically important banks: Assessment methodology and the additional loss absorbency requirement'' available at *www.bis.org/publ/bcbs201.htm.* In July 2013, the BCBS published revisions to this document entitled, ''Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement,'' which provides certain revisions and clarifications to the initial framework. The document is available at *www.bis.org/publ/bcbs255.htm.*

banking organizations, on an annual basis.[21]

The BCBS plans to review the BCBS framework, including the indicator-based measurement approach and the threshold scores for identifying global systemically important financial institutions, every three years in order to capture developments in the banking sector and any progress in methods and approaches for measuring systemic importance.[22] The first three-year review has already begun. In connection with this review, the Board has encouraged the BCBS to consider including a measure of short-term wholesale funding within the BCBS framework.

II. Description of the Proposal To Measure and Impose Capital Requirements Based Upon Global Systemic Importance

The proposal would establish a methodology for identifying a U.S. bank holding company as a GSIB based on the bank holding company's systemic risk profile and establishing the appropriate size of the GSIB surcharge.

A. Identification of a GSIB

The proposal would require each U.S. top-tier bank holding company with total consolidated assets of $50 billion or more that is not a subsidiary of a non-U.S. banking organization to determine annually whether it is a GSIB by using five categories that measure global systemic importance: Size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity. These proposed categories were chosen to measure whether the failure of a bank holding company, or the inability of a bank holding company to conduct regular course-of-business transactions, would likely impair financial intermediation or financial market functioning so as to inflict material damage on the broader economy. These factors are also consistent with the factors that the Board considers in reviewing financial stability implications of proposed mergers and acquisitions by banking organizations.[23]

The proposal identifies individual systemic indicators that measure the firm's profile within each category, set forth in Table 1 below, and sets forth a weighting for those indicators to compute a bank holding company's systemic indicator score. The advantages of a multiple indicator-based measurement approach is that it encompasses many dimensions of systemic importance and is transparent. These systemic indicators, and their relationship to financial stability, are described in section III of this preamble.

TABLE 1—SYSTEMIC INDICATORS

Category	Systemic Indicator	Indicator weight (%)
Size	Total exposures	20
Interconnectedness	Intra-financial system assets	6.67
	Intra-financial system liabilities	6.67
	Securities outstanding	6.67
Substitutability	Payments activity	6.67
	Assets under custody	6.67
	Underwritten transactions in debt and equity markets	6.67
Complexity	Notional amount of over-the-counter (OTC) derivatives	6.67
	Trading and available-for-sale (AFS) securities	6.67
	Level 3 assets6.67	6.67
Cross-jurisdictional activity	Cross-jurisdictional claims	10
	Cross-jurisdictional liabilities	10
Total for twelve indicators across five categories		100

To determine whether it is a GSIB, a bank holding company would first identify values for each systemic indicator listed in Table 1 that it reported on its most recent Banking Organization Systemic Risk Report (FR Y–15).[24] The bank holding company would then divide each of these values by the corresponding aggregate global indicator amount published by the Board in the fourth quarter of that year. This aggregate global indicator amount corresponds to the amount released by the BCBS, converted from Euros to U.S. dollars using the conversion rate provided by the BCBS. The aggregate global indicator amount released by the BCBS is the sum of the systemic indicator amounts for each category listed in Table 1 above, as reported by a sample of the largest banking organizations in the world for each systemic indicator.[25] The resulting quotient for each indicator would be

[21] *See http://www.bis.org/bcbs/gsib/gsibs_as_of_2014.htm.*

[22] *See* paragraph 39 of the Revised BCBS Document.

[23] The Dodd-Frank Act requires the Board to consider risks to U.S. financial stability when approving applications and notices by bank holding companies under sections 3 and 4 of the Bank Holding Company Act. Dodd-Frank Act, § 604(d) and (e), codified at 12 U.S.C. 1842(c)(7) and 1843(j)(2)(A). Other provisions of the Dodd-Frank Act impose a similar requirement that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. *See* sections 163, 173 of the Dodd-Frank Act.

[24] Subject bank holding companies are required to file the FR Y–15. In addition, a bank holding company that is designated as a GSIB would be required to calculate its systemic score the following year, regardless of whether it has $50 billion in total assets that year. *See* Instructions for Preparation of Banking Organization Systemic Risk Report available at *http://www.federalreserve.gov/reportforms/forms/FR_Y-1520131231_i.pdf.* The Board intends to seek comment on a proposal to revise the measure of total exposure to align with recent revisions to the Board's supplementary leverage ratio rule. 79 FR 57725 (September 26, 2014).

[25] The sample of global banking organizations includes the following:

(1) Banking organizations identified as the 75 largest global banking organizations, based on the financial year-end Basel III framework leverage ratio exposure measure; (2) banking organizations that were designated as GSIBs by the FSB in the previous year (unless supervisors agree that there is compelling reason to exclude them); and (3) banking organizations that have been added to the sample group by national supervisors using supervisory judgment (subject to certain criteria). *See* paragraph 26 of the BCBS Revised Document. The BCBS publishes annually the aggregate global indicator amount for each indicator. The Board will make this information available on its public Web site, through a press release, or by publication in the **Federal Register**.

multiplied by the prescribed weighting indicated in Table 1 above, and then multiplied by 10,000 to reflect the result in basis points. For example, if a bank holding company's cross-jurisdictional claims divided by the associated aggregate global amount for that indicator is 0.03 (that is, the firm's cross-jurisdictional claims amount is equal to 3 percent of the aggregate global amount for cross-jurisdictional claims), then its cross-jurisdictional claims indicator score would be 30 basis points (0.03*0.1*10,000). A bank holding company would then sum the weighted values for the twelve systemic indicators to determine its aggregate systemic indicator score and whether it would be identified as a GSIB, provided that the value for the substitutability indicators would be capped at 100, as described in section III.C of this preamble.[26] Under this methodology, a bank holding company's systemic importance depends on the amount of its activity in each systemic indicator relative to the global magnitude of the activity. The multi-indicator approach reflects the fact that there are multiple elements that contribute to systemic importance. The aggregate global indicator amounts released annually by the BCBS provide a simple and convenient means of comparing the global, consolidated activities of similarly situated global banking organizations.

In determining the threshold for identifying a GSIB, the Board analyzed various potential metrics for evaluating the systemic importance of large banking organizations, including those in the BCBS framework.[27] According to the Board's analysis, across many potential metrics, there is a clear separation in systemic risk profiles between the eight U.S. top-tier bank holding companies that would be identified as GSIBs under the proposed methodology and other bank holding companies. For example, using the estimated global systemic scores for the U.S. bank holding companies with over $50 billion of total consolidated as derived from data reported on the FR Y–15 filed in March 2014, there is a significant gap in scores among the largest bank holding companies, with all entities other than the eight bank holding companies that would currently be identified as GSIBs receiving aggregate systemic indicator scores of less than 50 points. Further, the bank holding company with the highest aggregate systemic indicator score that is not a GSIB received a score of approximately one third of that of the GSIB with the lowest aggregate systemic indicator score. The 130 basis point threshold is intended to capture the bank holding companies that are in this separate, higher systemic importance group. Bank holding companies with aggregate systemic indicator scores under the 130 basis point threshold would not be subject to a GSIB surcharge.[28]

The proposal would require a bank holding company with total consolidated assets of $50 billion or more to begin calculating its aggregate systemic indicator score by December 31 of the year in which it crosses the $50 billion threshold. While the Board's other regulations implementing section 165 of the Dodd-Frank Act generally measure application of the enhanced prudential standards based on a four-quarter average of total consolidated assets, the proposal would adopt a June 30 measurement date of total consolidated assets to be consistent with the FR Y–15 reporting schedule.

Question 1. What are commenters' views on the scope of application of the proposal? Is the $50 billion total consolidated asset threshold appropriate for requiring bank holding companies to calculate their systemic indicator scores, or should some higher asset threshold be considered? Is it appropriate to exclude bank holding companies that are subsidiaries of non-U.S. banking organizations from the proposal's scope of application?

Question 2. What, if any, different or additional indicators should the Board consider for the identification of a bank holding company as a GSIB? In particular, should the Board take into account a bank holding company's use of short-term wholesale funding instead of or in addition to substitutability in determining whether it should be designated as a GSIB? Why or why not?

Question 3. What, if any, different aggregate systemic indicator score threshold should the Board consider for the designation of a bank holding company as a GSIB?

Question 4. If the proposed framework were applied to nonbank financial companies designated by the Financial Stability Oversight Council for Board oversight, how (if at all) should the framework be modified to capture the systemic risk profile of those companies?

B. Using Systemic Indicators Reported on the FR Y–15

As noted above, the systemic indicators are aligned with those reported by a bank holding company on the FR Y–15. The FR Y–15, implemented on December 31, 2012, is an annual report that gathers data on components of systemic risk from large bank holding companies and provides firm-specific information to enable an analysis of the systemic risk profiles of such firms.[29] The FR Y–15 was developed to facilitate the implementation of the GSIB surcharge through regulation, and also is used to analyze the systemic risk implications of proposed mergers and acquisitions and to monitor, on an ongoing basis, the systemic risk profiles of bank holding companies subject to enhanced prudential standards under section 165 of the Dodd-Frank Act. As of December 31, 2013, all U.S. top-tier bank holding companies with total consolidated assets of $50 billion or more are required to file the FR Y–15 on an annual basis. In connection with this proposal, the Board intends to modify the FR Y–15 to gather information on bank holding companies' use of short-term wholesale funding.

Question 5. Is the proposed use of June 30 as the measurement date for the $50 billion total consolidated asset threshold appropriate? Is there an alternative measurement date that should be used?

C. Computing the Applicable GSIB Surcharge

Under the proposal, a bank holding company with an aggregate systemic indicator score of 130 basis points or greater would be identified as a GSIB and as such, would be subject to the higher of the two surcharges calculated under method 1 and method 2, as described below.

1. Method 1 Surcharge

A GSIB's method 1 surcharge would be the capital surcharge set forth in Table 2 below that corresponds to its

[26] Relative to the other categories in the method 1 surcharge, the substitutability category has a greater-than-intended impact on the assessment of systemic importance for certain banking organizations that are dominant in the provision of asset custody, payment systems, and underwriting services. Accordingly, the proposal would cap the maximum weighted score for the substitutability category at 100 basis points so that the substitutability category does not have a greater than intended impact on a bank holding company's global systemic score.

[27] *See* Appendix 2 of the BCBS Initial Document and Appendix 2 of the BCBS Revised Document for a detailed discussion of the empirical analysis conducted by BCBS.

[28] Scores would be rounded according to standard rounding rules for the purposes of assigning levels. That is, fractional amounts between zero and one-half would be rounded down to zero, while fractional amounts at or above one-half would be rounded to one.

[29] *See* 77 FR 76487 (December 28, 2012). The Board subsequently revised the FR Y–15 in December 2013. *See* 78 FR 77128 (December 20, 2013).

aggregate systemic indicator score. As discussed further in section II.C.3 of this preamble, the proposed method 1 surcharge reflects one method of calibrating the size of a surcharge based on the probable systemic impact from the failure of a GSIB as compared to a bank holding company that is large, but not systemically important.

TABLE 2—METHOD 1 SURCHARGE

Systemic indicator score (basis points)	Method 1 surcharge
Less than 130	0.0 percent (no surcharge).
130—229	1.0 percent.
230—329	1.5 percent.
330—429	2.0 percent.
430—529	2.5 percent.
530—629	3.5 percent.
630 or greater	3.5 percent plus 1.0 percentage point for every 100 basis point increase in score.

For instance, if a GSIB's systemic indicator score were 250, the GSIB's method 1 surcharge would be 1.5 percent.

As reflected in Table 2, the lowest method 1 surcharge would correlate to a method 1 score band ranging from 130 basis points to 229 basis points and would increase in increments of 0.5 percentage points for each additional 100 basis-point band, up to a method 1 surcharge of 2.5 percent. To account for the possibility that a GSIB's aggregate systemic indicator score could increase in the future beyond the fourth band, the proposal would require a one percentage point increase in the method 1 surcharge for each 100 basis point band at and above 530 basis points. An indefinite number of bands would give the Board the ability to assess an appropriate method 1 surcharge should a GSIB become significantly more systemically important, and would create disincentives for continued increases in global systemic scores.

Calibrating the surcharge using bands, as set forth in the proposal, or using a continuous function that increases linearly based on the weighted average of a bank holding company's systemic indicator score was considered during the development of the proposal. While the continuous function is more sensitive to changes in a bank holding company's systemic risk profile, it could be less transparent to the public and may be misleading in its precision as a measure of systemic risk. Accordingly, the proposal uses bands because it is a simple, transparent method that enables a GSIB and the public to better anticipate the size of the method 1 surcharge for future periods. The bands are intended to be sufficiently large so that modest changes in a firm's systemic indicators would not cause a firm to move between surcharge amounts. However, to the extent that a marginal change in a bank holding company's systemic risk profile caused the bank holding company to have a higher method 1 score, the proposal would delay the effective date of the higher method 1 score for a full year after it was calculated.

2. Method 2 Surcharge

As a second step to determining its GSIB surcharge, a GSIB would be required to compute its surcharge under method 2. Under method 2, the GSIB would calculate a score for the size, interconnectedness, complexity, and cross-jurisdictional activity systemic indicators in the same manner as undertaken to compute its aggregate systemic indicator score. However, rather than using the substitutability systemic indicator used under method 1, the GSIB would instead add to its score a quantitative measure of its use of short-term wholesale funding (short-term wholesale funding score).

The proposal would include a firm's short-term wholesale funding score as a factor in the GSIB surcharge in order to address the systemic risks associated with short-term wholesale funding use. As described in section I.A. of this preamble, use of short-term wholesale funding generally increases a firm's probability of default by making the firm vulnerable to short-term creditor runs, and increases the likely social costs of the firm's distress, including by heightening the risk that the firm's significant stress or failure will give rise to fire sale externalities. Incorporating a short-term wholesale funding score into the GSIB surcharge framework would require a GSIB to hold more capital based on whether it relies more heavily on short-term wholesale funding. The increased capital charge would help increase the resiliency of the firm against runs on its short-term wholesale funding and help internalize the cost of using short-term wholesale funding. A GSIB may opt to modify its funding profile to reduce its use of short-term wholesale funding, or continue to use short-term wholesale funding to the same degree but hold additional capital.

The proposed method 2 would not rely on a measure of substitutability, even though the proposal would use substitutability to determine whether a bank holding company would be identified as a GSIB. A bank holding company's substitutability is relevant in determining whether a bank holding company is a GSIB, as the failure of a bank holding company that performs a critical function where other firms lack the expertise or capacity to do so can pose significant risks to U.S. financial stability. However, the capital surcharge imposed on a GSIB should be designed to address the GSIB's susceptibility to failure, and increasing a GSIB's surcharge based on short-term wholesale funding use rather than substitutability is a more effective means of requiring a GSIB to internalize the externalities it imposes on the broader financial system and reduce its probability of failure. A GSIB's short-term wholesale funding score would be based on the GSIB's average use of short-term wholesale funding sources over a calendar year. The proposed components of short-term wholesale funding would be weighted to account for the varying degrees of risk associated with different sources of short-term wholesale funding, and would then be divided by the GSIB's average total risk-weighted assets over the same calendar year. A GSIB would then apply a fixed conversion factor to the measure of short-term wholesale funding to normalize the value of short-term wholesale funding relative to the other systemic indicators. This amount would constitute the GSIB's short-term wholesale funding score. The methodology to calculate the short-term wholesale funding score, including its justification, is described in detail in section III.F of this preamble.

Once a GSIB calculates its short-term wholesale funding score, the GSIB would add its short-term wholesale funding score to the systemic indicator scores for the size, interconnectedness, complexity, and cross-jurisdictional activity indicators and multiply this figure by two to arrive at its method 2 score. To determine its method 2 surcharge, a GSIB would identify the method 2 surcharge that corresponds to its method 2 score, as identified in Table 3 below.

TABLE 3—METHOD 2 SURCHARGE

Method 2 score (basis points)	Method 2 surcharge
Less than 130	0.0 percent (no surcharge).
130–229	1.0 percent.
230–329	1.5 percent.
330–429	2.0 percent.
430–529	2.5 percent.
530–629	3.0 percent.
630–729	3.5 percent.
730–829	4.0 percent.
830–929	4.5 percent.
930–1029	5.0 percent.

TABLE 3—METHOD 2 SURCHARGE—Continued

Method 2 score (basis points)	Method 2 surcharge
1030–1129	5.5 percent.
1130 or greater ..	5.5 percent plus 0.5 percentage point for every 100 basis point increase in score.

For instance, if a GSIB's short-term wholesale funding score were 200 and the sum of its systemic indicator scores for the size, interconnectedness, complexity, and cross-jurisdictional activity indicators were 530, the GSIB's method 2 score would equal 730, and its method 2 surcharge would be 4.0 percent.

Like the bands of the method 1 surcharge, the method 2 surcharge would use band ranges of 100 basis points, with the lowest band ranging from 130 basis points to 229 basis points. The method 2 surcharge would increase in increments of 0.5 percentage points per band, including bands at and above 1130 basis points. The modified band structure is appropriate for the method 2 surcharge because the proposed method's doubling of a GSIB's method 2 score could otherwise impose a surcharge that is larger than necessary to appropriately address the risks posed by a GSIB's systemic nature. As with the method 1 surcharge, the method 2 surcharge would include an indefinite number of bands in order to give the Board the ability to assess an appropriate surcharge should a GSIB become significantly more systemically important and would create disincentives for continued increases in systemic indicator and short-term wholesale funding scores.

3. Calibration of GSIB Surcharge and Estimated Impact

Under the proposal, a GSIB would be subject to the greater surcharge resulting from the two methods described above. Based upon the proposed formulation of method 2, in most instances, a GSIB would be subject to the surcharge resulting from method 2.

The proposed calibration of the GSIB surcharges is based on the Board's analysis of the additional capital necessary to equalize the probable systemic impact from the failure of a GSIB as compared to the probable systemic impact from the failure of a large, but not systemically important, bank holding company. Increased capital at a GSIB increases the firm's resiliency to failure, thereby reducing the probability of it having a systemic effect. The proposed approach also builds on analysis of the return on risk-weighted assets that was developed to inform the calibration of the minimums and capital conservation buffers of the Board's regulatory capital rule.

In addition, the Board considered the long-term economic impact of stronger capital and liquidity requirements at banking organizations. In 2010, the BCBS published a study (2010 BCBS study), which estimated, using historical data, that the economic benefits of more stringent capital and liquidity requirements, on net, outweighed the cost of such requirements and that benefits would continue to accrue at even higher levels of risk-based capital than are a part of the Board's regulatory capital rule.[30] The Board also considered that other jurisdictions have established capital requirements for global systemically important banking organizations that exceed those required by the BCBS framework; for instance, by imposing a larger surcharge upon global systemically important banking organizations than would be imposed under the BCBS framework or by requiring implementation of a global systemically important banking organization surcharge on a more expedited timeline. For example, Switzerland, Sweden, and Norway each require global systemically important banking organizations to adhere to capital requirements larger than those of the BCBS framework.[31]

Under the proposal, the method 1 surcharge would serve as a floor for the GSIB surcharge. Like the method 2 surcharge, the method 1 surcharge is based on the expected impact approach, but differs in three important ways. First, based upon current data, method 1 generally results in lower GSIB surcharges than method 2. Second, as compared to method 2, method 1 increases the GSIB surcharge at a higher rate to the extent a GSIB's systemic risk profile were to exceed the highest aggregate systemic indicator scores of the current GSIB population. As described above, the proposed method 1 surcharge would increase in 0.5 percentage point increments up to 2.5 percent, and then in 1.0 percentage point increments after a GSIB's systemic risk profile increases beyond the maximum current level (*i.e.,* beyond 250 points). Accordingly, in the future, a GSIB that increases in systemic importance could be bound by proposed method 1, rather than method 2. Third, method 1 would use a measure of substitutability. While the use of short-term wholesale funding is likely a more effective indicator for evaluating a GSIB's susceptibility to failure, a GSIB with a high substitutability score but low systemic indicator scores in all other categories may be subject to a surcharge under method 1 but not under method 2. In this case, imposing the method 1 surcharge would be appropriate, in order to correct for competitive and systemic distortions created by the perception that the GSIB may be too big to fail. Notably, this approach would also facilitate comparability among jurisdictions implementing the BCBS framework.

Using data as of year-end 2013, the Board estimates that the GSIB surcharges that would apply to the eight U.S. top-tier bank holding companies that would be identified as GSIBs would range from 1.0 to 4.5 percent.[32] Based upon these estimates, nearly all of the eight firms would already meet their GSIB surcharges on a fully phased-in basis, and all firms are on their way to meeting their surcharges over the proposed three-year phase-in period.

Question 6. The Board seeks comment on all aspects of the calibration of the GSIB surcharge. What are commenters' views regarding the proposed calibration? What are commenters' views regarding the benefits and challenges associated with the proposed two-method approach for determining the amount of the GSIB surcharge?

Question 7. What are commenters' views on the appropriateness of replacing the substitutability indicator with the short-term wholesale funding score under method 2?

Question 8. What are commenters' views on how the proposed GSIB

[30] *See* ''An assessment of the long-term economic impact of stronger capital and liquidity requirements,'' available at *http://www.bis.org/publ/bcbs173.pdf* (August 2010). This study specified that tangible common equity is net of goodwill and intangibles and is therefore analogous to common equity tier 1 capital under the regulatory capital rule.

[31] *See* the Swiss Financial Market Supervisory Authority FINMA's ''Pillar 2 Capital Adequacy Requirements for Banks Fact Sheet'' published June 17, 2013, available at: *http://www.finma.ch/e/finma/publikationen/faktenblaetter/Documents/fb-eigenmittelanforderungen-banken-e.pdf,* the Riksbank Financial Stability Report, Q2:2013, published November 2013, available at: *http://www.riksbank.se/Documents/Rapporter/FSR/2013/FSR_2/rap_fsr2_131128_eng.pdf,* and the Norwegian Ministry of Finance press release ''Regulation and decision on systemically important financial institutions,'' published May 12, 2014, available at *http://www.regjeringen.no/en/dep/fin/press-center/press-releases/2014/Regulation-and-decision-on-systemically-important-financial-institutions.html?id=759115.*

[32] These preliminary estimates were generated using BCBS aggregate global indicator amounts from year-end 2013, 2013 Y–15 data, and aggregated 2013 short-term wholesale funding data from the FR 2052a.

surcharge would impact the competitive position of GSIBs relative to foreign peer institutions?

Question 9. What potential costs would be imposed on bank holding companies if the proposed GSIB surcharge were implemented? What are the potential impacts of the proposed framework on economic growth, credit availability, and credit costs in the United States, over the short-term and long-term? How could potential costs, burdens, and other adverse effects be minimized while achieving the financial stability benefits of the proposed GSIB surcharge?

4. Alternative Method of Capturing Use of Short-Term Wholesale Funding

Alternative methods could be used to reflect use of short-term wholesale funding within the GSIB surcharge. For example, the applicable surcharge might be calculated by using short-term wholesale funding as a scaling factor for the method 1 surcharge. For example, one approach might be:

$$GSIB_{Method2} = F * (GSIB_{Method1}),$$

where

$GSIB_{Method2}$ is the result of scaling the method 1 surcharge, and where $F = 1 + (^{STWF}/_{RWA}) \times n$, where STWF is a GSIB's short-term wholesale funding amount and RWA is the total risk-weighted assets of a GSIB. The parameter n would be chosen to capture concerns about a GSIB's default probability and its interaction with the externalities identified in the $GSIB_{Method1}$ methodology.

As noted above, the Board believes that in most instances, $GSIB_{Method2}$ will be greater than $GSIB_{Method1}$. Multiplying the method 1 surcharge by a scaling factor F could result in stronger incentives to reduce use of short-term wholesale funding, particularly among the most systemic firms. For example, using the existing measure of reliance (short-term wholesale funding/total average risk-weighted assets) and a scaling factor of 4 (n=4) produces a comparable set of surcharges relative to the method 2 surcharge described above. Similarly, choosing a smaller factor for n would result in a smaller increase in GSIB surcharges.

Scaling the method 1 surcharge using a factor that incorporates short-term wholesale funding would reflect the view that the externalities associated with short-term wholesale funding depend largely on those firms identified as GSIBs under the proposed methodology. As a result, this alternative approach would maintain consistency with the BCBS framework's surcharge methodology. In addition, alternative scaling factors might be considered by altering the definition of short-term wholesale funding or using alternative dominators other than total average risk-weighted assets.

Question 10. What are commenters' views regarding scaling the method 1 surcharge to capture use of short-term wholesale funding? How should the scaling factor be chosen?

D. Augmentation of the Capital Conservation Buffer

Under the proposal, the GSIB surcharge would augment the regulatory capital rule's capital conversation buffer for purposes of determining the banking organization's maximum payout ratio.[33]

Under the regulatory capital rule, a banking organization must maintain capital sufficient to meet a minimum common equity tier 1 capital requirement of 4.5 percent, a minimum tier 1 capital requirement of 6 percent, and a minimum total capital requirement of 8.0 percent. In addition to those minimums, in order to avoid limits on capital distributions and certain discretionary bonus payments, a banking organization must hold sufficient capital to satisfy the minimum capital requirements, plus a capital conservation buffer composed of common equity tier 1 capital equal to more than 2.5 percent of risk-weighted assets. The capital conservation buffer is divided into quartiles, each associated with increasingly stringent limitations on capital distributions and certain discretionary bonus payments as the capital conservation buffer approaches zero.[34]

Under the proposal, the GSIB surcharge would expand each quartile of a GSIB's capital conservation buffer by the equivalent of one fourth of the GSIB surcharge.[35] The minimum common equity tier 1 capital requirement for banking organizations is 4.5 percent, which, when added to the capital conservation buffer of 2.5 percent, results in a banking organization needing to maintain a common equity tier 1 capital ratio of more than 7 percent to avoid limitations on distributions and certain discretionary bonus payments. Under the proposal, this 7 percent level would be further increased by the applicable GSIB surcharge.

The mechanics of the capital conservation buffer calculations, after incorporating the GSIB surcharge, are illustrated in the following example.[36] A bank holding company is identified as a GSIB under the proposed framework as a result of having an aggregate systemic indicator score of 350 basis points. Under method 1, the GSIB's score correlates to a 2.0 percent method 1 surcharge. Under method 2, the GSIB's method 2 score equals 625, so that the GSIB's score would correlate to a surcharge of 3.0 percent. As the method 2 surcharge is larger than the method 1 surcharge, the GSIB would be subject to a GSIB surcharge of 3.0 percent. As a result, in order to have no payout ratio limitation under the proposal, the GSIB must maintain a common equity tier 1 capital ratio in excess of 10 percent (determined as the sum of the minimum common equity tier 1 capital ratio of 4.5 percent plus the capital conservation buffer of 2.5 percent as expanded by the 3 percent GSIB surcharge). In determining the effect on capital distributions and bonus payments, each of the four quartiles of the GSIB's capital conservation buffer would be expanded by one fourth of its GSIB surcharge, or by 0.75 percent, as set forth below in Table 5.

[33] 12 CFR 217.11(a).

[34] *See id.*

[35] Separate from the possible expansion of the capital conservation buffer set forth in this proposal, the capital conservation buffer could also be expanded by any applicable countercyclical capital buffer amount. *See* 12 CFR 217.11(b).

[36] For the purposes of this example, all regulatory capital requirements are assumed to be fully phased in.

TABLE 5—CAPITAL CONSERVATION BUFFER ASSUMING A 3 PERCENT GSIB SURCHARGE

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 5.5 percent	No payout ratio limitation applies.
Between 5.5 percent and 4.125 percent	60 percent.
Between 4.125 percent and 2.75 percent	40 percent.
Between 2.75 percent and 1.375 percent	20 percent.
Less than or equal to 1.375 percent	0 percent.

The Board will be analyzing in the coming year whether the Board's capital plan and stress test rules should also include a form of GSIB surcharge.[37] If the Board were to decide to propose a GSIB surcharge for the capital plan and stress test rules at a later date, the Board would do so through a separate notice of proposed rulemaking.

E. Implementation and Timing

1. Ongoing applicability

Subject to the initial applicability provisions described in section E.2 of this preamble, if a top-tier U.S. bank holding company has total consolidated assets of $50 billion or more for the first time as of June 30 of a given year (as reported on its FR Y–9C), under the proposal, that bank holding company must begin calculating its aggregate systemic indicator score by December 31 of that calendar year. If the bank holding company's aggregate systemic indicator score exceeds 130 basis points, the bank holding company would be identified as a GSIB, and would be required to calculate its GSIB surcharge (using both method 1 and method 2) by December 31 of that year. Under the proposal, the GSIB surcharge would become an extension of the GSIB's capital conservation buffer a full year later, on January 1 of the second calendar year, based on the surcharge calculated in the year the bank holding company was identified as a GSIB.

The proposed schedule is aligned with the filing schedule for the FR Y–15 report, which must be filed by any top-tier U.S. bank holding company with total consolidated assets of $50 billion or more. Specifically, 65 calendar days after the December 31 as-of date of the FR Y–15, a bank holding company must file the FR Y–15 on which it reports the indicator values that comprise its aggregate systemic indicator score as of the end of the prior calendar year. Over the course of the year, the BCBS aggregates the indicator amounts from a specific sample of the largest global banking organizations (the 75 largest global banking organizations by total exposures, along with any banking organization that was designated as a global systemically important banking organization by the FSB in the previous year), and publishes its calculation of those aggregate amounts that November. Following publication by the BCBS, the Board will publish the aggregate global indicator amount, which generally will be equal to the amount published by the BCBS and converted into dollars. As noted above, a bank holding company with total consolidated assets of $50 billion or more would be required to calculate its aggregate systemic indicator score by December 31, relying on the previous year-end data. If a bank holding company were identified as a GSIB, it would also be required to calculate its GSIB surcharge by the end of the year in which it qualified as a GSIB. To perform this calculation, the GSIB would be required to retain data necessary to calculate its short-term wholesale fund score during the previous year.

For example, a bank holding company would file on March 1, 2020 a FR Y–15 report, on which it reported its systemic indicator values as of December 31, 2019. The BCBS would publish its estimates of the aggregate global indicator amounts as of December 31, 2019 in November 2020, and the Board would publish the aggregate global indicator amounts shortly thereafter. The bank holding company would calculate its aggregate systemic indicator score by December 31, 2020. If the bank holding company were identified as a GSIB by December 31, 2020, that GSIB would be required to calculate its global systemic score using its systemic indicators and short-term wholesale funding data as of December 31, 2019. In that instance, the GSIB would be required to use its GSIB surcharge to calculate its maximum payout ratio under the capital conservation buffer framework beginning on January 1, 2022.

After the initial GSIB surcharge is in effect, if a GSIB's systemic risk profile changes from one year to the next such that it becomes subject to a higher GSIB surcharge, the higher GSIB surcharge would not take effect for a full year (that is, two years from the systemic indicator measurement date). If a GSIB's systemic risk profile changes such that the GSIB would be subject to a lower GSIB surcharge, the GSIB would be subject to the lower surcharge beginning in the next quarter.

Question 11. What are commenters' views with regard to the proposal's dates for the measurement of systemic indicator scores for purposes of the GSIB surcharge? In light of these dates, what challenges would bank holding companies encounter in retaining capital sufficient to adhere to the GSIB surcharge?

Question 12. What challenges would a bank holding company encounter in retaining short-term wholesale funding data sufficient to calculate the GSIB surcharge?

2. Initial Applicability

For the eight bank holding companies that would currently be identified as GSIBs under the proposed methodology, the GSIB surcharge would be phased in from January 1, 2016 to December 31, 2018. This phase-in period was chosen to align with the phase-in of the capital conservation buffer and countercyclical capital buffer, as well as the phase-in period of the BCBS framework. Table 6 shows the regulatory capital levels that a GSIB must satisfy to avoid limitations on capital distributions and discretionary bonus payments during the applicable transition period, from January 1, 2016 to January 1, 2019.

[37] *See* 12 CFR 225.8 and 12 CFR part 252.

TABLE 6—REGULATORY CAPITAL LEVELS FOR GSIBS [38]

	Jan. 1, 2016	Jan. 1, 2017	Jan. 1, 2018	Jan. 1, 2019
Capital conservation buffer	0.625%	1.25%	1.875%	2.5%.
GSIB surcharge	25% of applicable GSIB surcharge.	50% of applicable GSIB surcharge.	75% of applicable GSIB surcharge.	100% of applicable GSIB surcharge.
Minimum common equity tier 1 capital ratio + capital conservation buffer + applicable GSIB surcharge.	5.125% + 25% of applicable GSIB surcharge.	5.75% + 50% of applicable GSIB surcharge.	6.375% + 75% of applicable GSIB surcharge.	7.0% + 100% of applicable GSIB surcharge.
Minimum tier 1 capital ratio + capital conservation buffer + applicable GSIB surcharge.	6.625% + 25% of applicable GSIB surcharge.	7.25% + 50% of applicable GSIB surcharge.	7.875% + 75% of applicable GSIB surcharge.	8.5% + 100% of applicable GSIB surcharge.
Minimum total capital ratio + capital conservation buffer + applicable GSIB surcharge.	8.625% + 25% of applicable GSIB surcharge.	9.25% + 50% of applicable GSIB surcharge.	9.875% + 75% of applicable GSIB surcharge.	10.5% + 100% of applicable GSIB surcharge.

The GSIB surcharge in effect on January 1, 2016, would rely on the systemic indicator scores reported as of December 31, 2014. However, given that bank holding companies have not been required to calculate or retain data related to their short-term wholesale funding scores (which is generally based on average data over the preceding calendar year), the proposal would measure a GSIB's short-term wholesale funding amount for: (i) The GSIB surcharge calculated by December 31, 2015, based on data from the third quarter of 2015, and (ii) the GSIB surcharge calculated by December 31, 2016, based on data from the third and fourth quarters of 2015. For the GSIB surcharge calculated by December 31, 2017 (assuming a GSIB's surcharge does not otherwise increase), the surcharge would be based on yearly data from 2016. In order to comply with the proposal, a bank holding company that is currently identified as a GSIB would be required to retain information to calculate its short-term wholesale funding amount beginning on July 1, 2015.

While the proposal would generally rely on a full calendar year of short-term wholesale funding data to compute a GSIB's short-term wholesale funding amount for purposes of calculating the GSIB's method 2 surcharge going forward, the proposed implementation schedule would rely on quarterly averages for the surcharges calculated by December 31, 2015 and 2016, which should be sufficient to smooth the volatility for short-term wholesale funding while facilitating implementation of the method 2 surcharge on the same timeline as that used for the implementation of the method 1 surcharge.

Table 7 sets forth the reporting and compliance dates for the proposed GSIB surcharge described above.

TABLE 7—GSIB SURCHARGE REPORTING AND COMPLIANCE DATES DURING PHASE-IN PERIOD

Date	Occurrence
March 2015	FR Y–15 filing deadline reflecting bank holding company systemic indicator values as of December 31, 2014.
July 1, 2015	GSIBs begin collecting short-term wholesale funding data.
November 2015	BCBS publishes aggregate global indicator amounts using 2014 data, and the Board publishes the aggregate global indicator amount for use by U.S. bank holding companies shortly thereafter.
January 1, 2016	Bank holding companies identified as GSIBs are subject to GSIB surcharge (as phased in) calculated using year-end 2014 systemic indicator scores and Q3 2015 short-term wholesale funding data.
March 2016	FR Y–15 filing deadline reflecting bank holding company (1) systemic indicator values and scores as of December 31, 2015 and (2) short-term wholesale funding score using Q3 and Q4 2015 data (to be separately proposed).
November 2016	BCBS publishes aggregate systemic indicator amounts using 2015 data, and the Board publishes the aggregate global indicator amount for use by U.S. bank holding companies shortly thereafter.
December 31, 2016	Bank holding companies identified as GSIBs must calculate their GSIB surcharge using year-end 2015 systemic indicator scores and short-term wholesale funding score using Q3 and Q4 2015 short-term wholesale funding data.
January 1, 2017	If the GSIB surcharge calculated by December 31, 2016, stays the same or decreases, the GSIB is subject to that GSIB surcharge (if the GSIB surcharge increases, increased GSIB surcharge comes into effect beginning on January 1, 2018).
March 2017	FR Y–15 filing deadline reflecting bank holding company (1) systemic indicator values and scores as of December 31, 2016; and (2) short-term wholesale funding score as of December 31, 2016 using 2016 short-term wholesale funding data (to be separately proposed).
November 2017	BCBS publishes aggregate systemic indicator amounts using 2016 data, and the Board publishes the aggregate global indicator amount for use by U.S. bank holding companies shortly thereafter.
December 31, 2017	Bank holding companies identified as GSIBs must calculate their GSIB surcharge using year-end 2016 systemic indicator scores and 2016 short-term wholesale funding score.

[38] Table 6 assumes that the countercyclical capital buffer is zero.

TABLE 7—GSIB SURCHARGE REPORTING AND COMPLIANCE DATES DURING PHASE-IN PERIOD—Continued

Date	Occurrence
January 1, 2017	If the GSIB surcharge calculated by December 31, 2017, stays the same or decreases, the GSIB is subject to that GSIB surcharge (if the GSIB surcharge increases, increased GSIB surcharge comes into effect beginning on January 1, 2019).

Question 13. What are commenters' views regarding the timing of the implementation of the GSIB surcharge? What are the benefits and drawbacks of aligning the effective dates of the method 1 and method 2 surcharges? Should the Board consider staggering the effectiveness of the method 1 and method 2 surcharges such that GSIBs would be able to use a year's worth of short-term wholesale funding data to compute their short-term wholesale funding scores? Why or why not?

Question 14. What are commenters' views with regard to the proposal's dates for the measurement of systemic indicator scores for purposes of the GSIB surcharge that is effective January 1, 2016? Would using data as of year-end 2014 present any difficulties in terms of capital retention for bank holding companies that are currently identified as GSIBs?

F. Periodic Review and Refinement of the Proposal

The Board recognizes that the proposal, if adopted, may require further refinement over time. The Board would monitor the proposed GSIB surcharge methodology and consider whether any revisions are necessary to improve the effectiveness of the GSIB surcharge in advancing the Board's goals. This could include consideration of any revisions made by the BCBS to the BCBS framework, as well as revisions to the minimum threshold to qualify as a GSIB and revisions to the method 1 and method 2 surcharge calculations that may be necessary over time.[39] To the extent that revisions are deemed necessary, any proposed changes would be subject to notice and comment.

Question 15. How well would the proposal's GSIB surcharge incentivize bank holding companies to minimize their systemic risk profiles? How could the framework be changed to strengthen these incentives?

Question 16. How well does the proposal mitigate any implicit subsidies that GSIBs enjoy due to market perceptions that they are too big to fail? How well does the proposed framework force GSIBs to internalize the externalities that their failure or material financial distress would pose to the broader financial system?

Question 17. How well do the proposed indicators of global systemic importance and other aspects of the scoring methodology capture the relevant dimensions of global systemic importance and the negative externalities that global systemic importance can generate? What modifications or simplifications, if any, would be appropriate to assess global systemic importance?

Question 18. To what extent could bank holding companies and market participants easily determine a firm's GSIB surcharge? How could the Board make the proposal more transparent in this respect?

Question 19. What are the advantages and disadvantages of a framework where a firm is identified as a GSIB not by firm-specific measures (*e.g.,* a firm's size, interconnectedness, and other characteristics), but rather by how a firm's specific measures compare to the aggregate measures of a set of global large banking organizations? What are the implications for bank holding companies of using internationally compiled data to determine their systemic scores?

Question 20. What are the implications of periodically recalibrating the threshold scores and the size of the bands under methods 1 and 2? What are the implications of revising the framework over time? What factors should the Board consider in making such modifications and recalibrations?

Question 21. How well does the proposal reflect the changing elements of the global economy, such as growth in global domestic product, advances in financial intermediation, and inflation, and how might the proposal be adjusted to better reflect such elements?

III. Indicators of Global Systemic Risk

As described above, the Board is proposing to determine the systemic scores and GSIB surcharges of bank holding companies using six components under two formulations. These components, which are described in detail below, were chosen on the basis of the Board's belief that they are indicative of the global systemic importance of bank holding companies. Five of the components—size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity—have been previously identified as indicative of global systemic importance by the BCBS, FSB, and G–20, and are defined in detail in the instructions for the FR Y–15.[40] The Board also intends to propose amendments to the FR Y–15 to collect information regarding the sixth component, a firm's short-term wholesale funding amount, in the near term.

A. Size

A banking organization's size is a key measure of its systemic importance. A banking organization's distress or failure is more likely to negatively impact the financial markets and the economy more broadly if the banking organization's activities comprise a relatively large share of total financial activities. Moreover, the size of exposures and volume of transactions and assets managed by a banking organization are indicative of the extent to which clients, counterparties, and the broader financial system could suffer disruption if the firm were to fail or become distressed. In addition, the larger a banking organization is, the more difficult it generally is for other firms to replace its services and, therefore, the greater the chance that the banking organization's distress or failure would cause disruption.

Under the proposal, a bank holding company's size would be equivalent to total exposures, which would mean the bank holding company's measure of total leverage exposure calculated pursuant to the regulatory capital rule.[41] The Board separately intends to propose changes to the FR Y–15 to align its definition of ''total exposure'' with the

[39] The BCBS expects to review and refine the BCBS framework, including the initial threshold and the size of the surcharge buckets, every three years in order to capture developments in the banking sector and assess new approaches to measuring systemic risk. *See* paragraph 39 of the BCBS Revised Document.

[40] The systemic indicators described in the proposal are those previously identified as indicative of global systemic importance by the BCBS, FSB, and G–20. Many of the items reported on the FR Y–15 are also reported on the Consolidated Financial Statements for Holding Companies (FR Y–9C).

[41] *See* 12 CFR 217.10(c)(4).

definition in the regulatory capital rule, and expects that these changes will be in effect before the March 2015 due date of the FR Y–15.

Question 22. What modifications, if any, are necessary to ensure that total exposure is a size indicator that appropriately measures the extent to which a bank holding company may cause damage or disruption to the broader financial system?

B. Interconnectedness

Financial institutions may be interconnected in many ways, as banking organizations commonly engage in transactions with other financial institutions that give rise to a wide range of contractual obligations. The proposal reflects the belief that financial distress at a GSIB may materially raise the likelihood of distress at other firms given the network of contractual obligations throughout the financial system. A banking organization's systemic impact is, therefore, likely to be directly related to its interconnectedness vis-à-vis other financial institutions and the financial sector as a whole.

Under the proposal, interconnectedness would be measured by intra-financial system assets, intra-financial system liabilities, and securities outstanding as of December 31 of a given year. These indicators represent the major components (lending, borrowing, and capital markets activity) of intra-financial system transactions and contractual relationships, and are broadly defined to capture the relevant dimensions of these activities by a bank holding company. For the purpose of the intra-financial system assets and intra-financial system liabilities indicators, financial institutions are defined by the FR Y–15 instructions as depository institutions (as defined in the FR Y–9C Instructions, Schedule HC–C, line item 2), bank holding companies, securities dealers, insurance companies, mutual funds, hedge funds, pension funds, investment banks, and central counterparties (as defined in the FR Y–15 Instructions, Schedule D, line item 1).[42] Central banks and multilateral development banks are excluded, but state-owned commercial banks are included.

It should be noted that the Board has developed different concepts and methodologies for identifying financial sector entities, including in the Board's regulatory capital rule, the FR Y–15, and the recently adopted LCR rule. The Board is proposing to continue using the definition that is reported on the Y–15 reporting form. The Board may consider converging these concepts and methodologies at some point in the future.

Question 23. What aspects, if any, of the measures of intra-financial system assets and intra-financial system liabilities should be adjusted to better capture interconnectedness between bank holding companies? What modifications to these indicators or additional indicators would more appropriately measure the interconnectedness associated with securities financing transactions and OTC derivative exposures? How, if at all, should collateral and netting agreements be reflected in these measures? What are the advantages and disadvantages of including in these measures exposures over which firms do not have control, such as the amount of their securities owned by other financial firms?

C. Substitutability

The potential adverse systemic impact of a banking organization will depend in part on the degree to which other banking organizations are able to serve as substitutes for its role in the financial system in the event that the banking organization is unable to perform its role during times of financial stress. Under the proposal, three indicators would be used to measure substitutability: Assets under custody as of December 31 of a given year, the total value of payments activity sent over the calendar year, and the total value of transactions in debt and equity markets underwritten during the calendar year. Relative to the other categories in the method 1 surcharge, the substitutability category has a greater-than-intended impact on the assessment of systemic importance for certain banking organizations that are dominant in the provision of asset custody, payment systems, and underwriting services. The Board is therefore proposing to cap the maximum score for the substitutability category at 500 basis points (or 100 basis points, after the 20 percent weighting factor is applied) so that the substitutability category does not have a greater than intended impact on a bank holding company's global systemic score.[43] This proposed cap is also consistent with the approach taken in the BCBS framework. The following discusses how each of the three substitutability indicators would be measured and reported on the FR Y–15.

1. *Assets under custody.* The collapse of a GSIB that holds assets on behalf of customers, particularly other financial firms, could severely disrupt financial markets and have serious consequences for the domestic and global economies. The proposal would measure assets under custody as the aggregate value of assets that a bank holding company holds as a custodian. For purposes of the proposal, a custodian would be defined as a banking organization that manages or administers the custody or safekeeping of stocks, debt securities, or other assets for institutional and private investors.

2. *Payments activity.* The collapse of a GSIB that processes a large volume of payments is likely to affect a large number of customers, including financial, non-financial, and retail customers. In the event of collapse, these customers may be unable to process payments and could experience liquidity issues as a result. Additionally, if failure (meaning the inability to operate properly in the payment system) occurred while the banking organization was in a net positive liquidity position, those funds could become inaccessible to the recipients.

The proposal would use a bank holding company's share of payments made through large-value payment systems and through agent banks as an indicator of the company's degree of systemic importance within the context of substitutability. Specifically, payments activity would be the value of all cash payments sent via large-value payment systems, along with the value of all cash payments sent through an agent (*e.g.*, using a correspondent or nostro account), over the calendar year in the currencies specified on the FR Y–15.

3. *Underwritten transactions in debt and equity markets.* The failure of a GSIB with a large share of the global market's debt and equity underwriting could impede new securities issuances and potentially increase the cost of debt and capital. In order to assess a bank holding company's significance in underwriting as compared to its peers, the proposal would measure underwriting activity as the aggregate value of equity and debt underwriting transactions of a banking organization,

[42] *See* FR Y–15 Instructions, Schedule B, line item 1.

''Central counterparties'' for the purposes of the proposal has the same meaning used in the FR Y–15 Instructions, Schedule D, line item 1. That is, central counterparties are entities (*e.g.,* a clearing house) that facilitate trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

[43] *See* paragraph 19 of the BCBS Revised Document.

conducted over the calendar year, as specified on the FR Y–15.

D. Complexity

The global systemic impact of a banking organization's failure or distress is positively correlated to that organization's business, operational, and structural complexity. Generally, the more complex a banking organization is, the greater the expense and time necessary to resolve it. Costly resolutions can have negative cascading effects in the markets, including disorderly unwinding of positions, fire-sales of assets, disruption of services to customers, and increased uncertainty in the markets.

As reflected in the FR Y–15, the proposal would include three indicators of complexity: Notional amount of OTC derivatives, Level 3 assets, and trading and AFS securities as of December 31 of a given year. The indictors would be measured as follows:

1. *Notional amount of OTC derivatives.* A bank holding company's OTC derivatives activity would be the aggregate notional amount of the bank holding company's OTC derivative transactions that are cleared through a central counterparty or settled bilaterally.

2. *Level 3 assets.* Level 3 assets would be equal to the value of the assets that the bank holding company measures at fair value for purposes of its FR Y–9C quarterly report (Schedule HC–Q, column E). These are generally illiquid assets with fair values that cannot be determined by observable data, such as market price signals or models. Instead, the value of the level 3 assets is calculated based on internal estimates or risk-adjusted value ranges by the banking organization. Firms with high levels of level 3 assets would be difficult to value in times of stress, thereby negatively affecting market confidence in such firms and creating the potential for a disorderly resolution process.

3. *Trading and AFS securities.* A banking organization's trading and AFS securities can cause a market disturbance through mark-to-market losses and fire sales of assets in times of distress. Specifically, a banking organization's write-down or sales of securities could drive down the prices of these securities, which could cause a spill-over effect that forces other holders of the same securities to experience mark-to-market losses. Accordingly, the proposal would consider a bank holding company's trading and AFS securities as an indicator of complexity.

Question 24. Do the three indicators (notional amount of OTC derivatives transactions, Level 3 assets, and trading and AFS securities) appropriately reflect a bank holding company's complexity? What alternative or additional indicators might better reflect complexity and global systemic importance?

Question 25. What, if any, other financial instruments should be measured by the trading and AFS securities systemic indicator and why?

E. Cross-Jurisdictional Activity

Banking organizations with a large global presence are more difficult and costly to resolve than purely domestic institutions. Specifically, the greater the number of jurisdictions in which a firm operates, the more difficult it would be to coordinate its resolution and the more widespread the spillover effects were it to fail. Under the proposal, the two indicators included in this category—cross-jurisdictional claims and cross-jurisdictional liabilities—would measure a bank holding company's global reach by considering its activity outside its home jurisdiction as compared to the cross-jurisdictional activity of its peers. In particular, claims would include deposits and balances placed with other banking organizations, loans and advances to banking organizations and non-banks, and holdings of securities. Liabilities would include the liabilities of all offices of the same banking organization (headquarters as well as branches and subsidiaries in different jurisdictions) to entities outside of its home market.

Question 26. Are there any other specific metrics that should be used to ensure that a bank holding company's cross-jurisdictional reach is adequately measured? Should there be any modifications to the cross-jurisdictional indicators that have been proposed?

F. Use of Short-Term Wholesale Funding

As described in section II.C.2 of this preamble, the proposal incorporates a measure of short-term wholesale funding use in order to address the risks presented by those funding sources.

To determine its method 2 surcharge under the proposal, a GSIB would be required to compute its short-term wholesale funding score. As a first step in doing so, a GSIB would determine, on a consolidated basis, the amount of its short-term wholesale funding sources with a remaining maturity of less than one year for each business day of the preceding calendar year. Under the proposal, components of a GSIB's short-term wholesale funding amount would generally be defined using terminology from the LCR rule and aligned with items that are reported on the Board's Complex Institution Liquidity Monitoring Report on Form FR 2052a. In identifying items for inclusion in short-term wholesale funding, the proposal focuses on those sources that give rise to the greatest risk of creditor runs and associated systemic externalities. Specifically, a GSIB's short-term wholesale funding amount would include the following:

- All funds that the GSIB must pay under each secured funding transaction, other than an operational deposit, with a remaining maturity of one year or less;
- All funds that the GSIB must pay under each unsecured wholesale funding transaction, other than an operational deposit, with a remaining maturity of one year or less;
- The fair market value of all assets that the GSIB must return in connection with transactions where it has provided a non-cash asset of a given liquidity category to a counterparty in exchange for non-cash assets of a higher liquidity category, and the GSIB and the counterparty agreed to return the assets to each other at a future date (covered asset exchange);
- The fair market value of all assets that the GSIB must return under transactions where it has borrowed or otherwise obtained a security which it has sold (short positions); and
- All brokered deposits and all brokered sweep deposits held at the GSIB provided by a retail customer or counterparty.

The proposal would align the definition of a ''secured funding transaction'' with the definition of that term in the LCR rule. As such, it would include repurchase transactions, securities lending transactions, secured funding from a Federal Reserve Bank or other foreign central bank, Federal Home Loan Bank advances, secured deposits, loans of collateral to effect customer short positions, and other secured wholesale funding arrangements. These funding sources are treated as short-term wholesale funding, provided that they have a remaining maturity of less than one year, as such funding generally gives rise to cash outflows during periods of stress because counterparties are more likely to abruptly remove or cease to roll-over secured funding transactions as compared to longer-term funding.

The proposal would also align the definition of ''unsecured wholesale funding'' with the definition of that term in the LCR rule. Such funding typically includes: wholesale deposits; federal funds purchased; unsecured advances from a public sector entity, sovereign entity, or U.S. government sponsored enterprise; unsecured notes;

bonds, or other unsecured debt securities issued by a GSIB (unless sold exclusively to retail customers or counterparties), brokered deposits from non-retail customers; and any other transaction where an on-balance sheet unsecured credit obligation has been contracted. As evidenced in the financial crisis, funding from wholesale counterparties presents greater run risk to banking organizations during periods of stress as compared to the same type of funding provided by retail counterparties. Unsecured wholesale funding has exhibited a potential to be withdrawn in large amounts by wholesale counterparties seeking to meet their financial obligations when facing financial distress. The proposal would include in short-term wholesale funding unsecured wholesale funding that is partially or fully covered by deposit insurance, as such funding poses run risks even when deposit insurance is present. The proposal would not reflect offsetting amounts from the release of assets held in segregated accounts in connection with wholesale deposits included in a GSIB's short-term wholesale funding amount.

The proposed definition of short-term wholesale funding also would include the fair market value of all assets that a GSIB must return in connection with transactions where it has provided a non-cash asset of a given liquidity category to a counterparty in exchange for non-cash assets of a higher liquidity category, and the GSIB and the counterparty agreed to return the assets to each other at a future date. The unwinding of such transactions could negatively impact a GSIB's funding profile in times of stress to the extent that the unwinding requires the GSIB to obtain funding for a less liquid asset or security or because the counterparty is unwilling to roll over the transaction. The proposed definition also includes the fair market value of all assets a GSIB must return under transactions where it has borrowed or otherwise obtained a security which it has sold. If the transaction in which the GSIB borrows or obtains the security closes out, then the GSIB would be required to fund a repurchase or otherwise obtain the security, which may impact the GSIB's funding profile.

The proposal would characterize retail brokered deposits and brokered sweep deposits as short-term wholesale funding because these forms of funding have demonstrated significant volatility in times of stress, notwithstanding the presence of deposit insurance. These types of deposits can be easily moved from one institution to another during times of stress, as customers and counterparties seek higher interest rates or seek to use those funds for other purposes and on account of the incentives that third-party brokers have to provide the highest possible returns for their clients. However, the proposed definition of short-term funding would exclude deposits from retail customers and counterparties that are not brokered deposits or brokered sweep deposits, as these deposits are less likely to pose liquidity risks in times of stress.

The proposed definition of short-term wholesale funding would exclude operational deposits from secured funding transactions and unsecured wholesale funding. Operational deposits would be defined consistent with the LCR rule as deposits required for the provision of operational services by a banking organization to its customers, which can include services related to clearing, custody, and cash management. Because these deposits are tied to the provision of specific services to customers, these funding sources present less short-term liquidity risk during times of stress. Under the LCR rule, such deposits are required to be tied to operational services agreements that have a minimum 30-day termination period or are the subject of significant termination or switching costs.

As an alternative proposal, the Board is proposing to treat operational deposits as short-term wholesale funding for the purposes of the method 2 surcharge and to weight these deposits at 25 percent (which, as described below, is the same weighting applied to secured funding transactions secured by a level 1 liquid asset). To the extent that a firm suffers operational deposit outflows, the firm will generally need to liquidate assets to meet the large deposit outflows. These assets may include securities or short-term loans to other financial institutions, and the rapid liquidation of such assets may have an adverse impact on financial stability.

Question 27. How should the measure of short-term wholesale funding amount reflect operational deposits? If these are included in the measure of short-term wholesale funding amount, how should operational deposits be weighted?

In addition, the GSIB's short-term wholesale funding amount would not reflect liquidity risks from derivatives transactions. In particular, a GSIB's short-term wholesale funding amount would not reflect the potential need for a firm to post incremental cash or securities as margin for derivatives transactions that move in a counterparty's favor, nor would the short-term wholesale funding amount recognize the possibility that a GSIB may lose the ability to rehypothecate collateral it has received in connection with its derivatives transactions. While each of these scenarios could present liquidity risk to the firm, it is arguable that such liquidity risks are more appropriately considered under the liquidity regulatory framework.

However, as an alternative proposal, the Board is proposing that the definition of short term wholesale funding include exposures attributable to derivatives transactions, in particular, in cases where the firm has the ability to rehypothecate collateral received in connection with derivative transactions. Under this alternative proposal, the weighting of these exposures could be determined based on the counterparty or type of derivative transaction.

Question 28. How should the measure of short-term wholesale funding amount reflect exposures for derivatives transactions, in particular, in cases where the firm has the ability to rehypothecate collateral received in connection with derivative transactions? If derivatives exposures are included in the measure of short-term wholesale funding amount, how should they be weighted?

The GSIB's short-term wholesale funding amount would not reflect any exposures that arise from sponsoring a structured transaction where the issuing entity is not consolidated on the GSIB's balance sheet under GAAP. Such treatment, however, may be at odds with the support that some companies provided during the financial crisis to the funds they advised and sponsored. For example, many money market mutual fund sponsors, including banking organizations, supported their money market mutual funds during the crisis in order to enable those funds to meet investor redemption requests without having to sell assets into then-fragile and illiquid markets. For these reasons, as an alternative proposal, the Board is proposing to adjust the definition of short-term wholesale funding to include exposures arising from sponsoring a structured transaction. Under this alternative proposal, the weighting of these exposures would be determined based on the liquidity characteristics of the assets of the issuing entity.

Question 29. How should the measure of short-term wholesale funding amount reflect exposures for structured transactions? If these exposures are included in the measure of short-term wholesale funding amount, how should they be weighted?

After a GSIB has identified the short-term wholesale funding sources specified above, the GSIB would apply

a weighting system that is designed to take account of the varying levels of systemic risk associated with the different funding sources comprising its short-term wholesale funding amount. The weighting system generally would focus on the remaining maturity of a short-term wholesale funding source and the asset class of any collateral backing the source, each of which is captured on the FR 2052a. A GSIB would be required to categorize the sources that comprise its short-term wholesale funding amount into one of four remaining maturity buckets (under 30 days (which would include short-term wholesale funding sources with no maturity date), 31 to 90 days, 91 to 180 days, and 181 to 365 days), and to distinguish between certain of those sources based on whether they are backed by level 1 liquid assets, level 2A liquid assets, or level 2B liquid assets, each as defined in the Board's LCR rule. To determine the remaining maturity of a short-term wholesale funding source, a GSIB would be required to assume that a short-term wholesale funding source matures in accordance with the LCR rule's provisions for determining maturity, including the provisions for determining the maturity of transactions with no maturity date. In general, the proposed weights would progressively decrease as the remaining maturity of a funding transaction increases, and would progressively increase as the quality of the collateral securing a funding transaction decreases.

Table 8 below sets forth the proposed weights for each component of short-term wholesale funding.

TABLE 8—SHORT-TERM WHOLESALE FUNDING WEIGHTING

Component of short-term wholesale funding	Remaining maturity of 30 days or less (percent)	Remaining maturity of 31 to 90 days (percent)	Remaining maturity of 91 to 180 days (percent)	Remaining maturity of 181 to 365 days (percent)
Secured funding transaction secured by a level 1 liquid asset	25	10	0	0
(1) Secured funding transaction secured by a level 2A liquid asset;	50	25	10	0
(2) Unsecured wholesale funding where the customer or counterparty is not a financial sector entity or a consolidated subsidiary of a financial sector entity; and				
(3) Brokered deposits and brokered sweep deposits provided by a retail customer or counterparty; and				
(4) Covered asset exchanges involving the future exchange of a level 1 liquid asset for a level 2A liquid asset; and				
(5) Short positions where the borrowed security is either a level 1 or level 2A liquid asset				
(1) Secured funding transaction secured by a level 2B liquid asset; and	75	50	25	10
(2) Covered asset exchanges and short positions (other than those described above)				
(1) Unsecured wholesale funding where the customer or counterparty is a financial sector entity or a consolidated subsidiary thereof; and	100	75	50	25
(2) Any other component of short-term wholesale funding				

As noted above, a GSIB's short-term wholesale funding amount would be determined by calculating its short-term wholesale funding amount for each business day over the prior calendar year, applying the appropriate weighting as set forth in Table 8 by short-term wholesale funding source and remaining maturity, and averaging this amount over the prior calendar year. Consideration of a GSIB's weighted short-term wholesale funding amount as a yearly average is intended to reduce the extent to which daily or monthly volatility in a firm's use of short-term wholesale funding could affect the firm's method 2 surcharge level. Using a yearly average of a firm's daily short-term wholesale funding use to determine the weighted short-term wholesale funding amount is intended to strike an appropriate balance between generating an accurate depiction of a GSIB's short-term wholesale funding use and operational complexity.

Question 30. What, if any, additional or alternative items should be considered in determining a GSIB's short-term wholesale funding amount? Should wholesale deposits included in a GSIB's unsecured wholesale funding reflect any offsetting amounts from the release of assets held in segregated accounts? Should brokered deposits and brokered sweep deposits provided by a retail customer or counterparty be excluded from a GSIB's short-term wholesale funding amount?

Question 31. What are commenters' views on the proposed method of weighting a GSIB's short-term wholesale funding amount?

After calculating its weighted short-term wholesale funding amount, the GSIB would divide its weighted short-term wholesale funding amount by its average risk-weighted assets, measured as the four-quarter average of the firm's total risk-weighted assets (*e.g.*, standardized or advanced approaches) associated with the lower of its risk-based capital ratios as reported on its FR Y–9C for each quarter of the previous year. Consideration of a GSIB's short-term wholesale funding amount as a percentage of its average risk-weighted assets is an appropriate means of scaling in a firm-specific manner a firm's use of short-term wholesale funding. This reflects the view that the systemic risks associated with a firm's use of short-term wholesale funding are comparable regardless of the business model of the firm. More specifically, the use of short-term wholesale funding poses similar systemic risks regardless of whether short-term wholesale funding is used by a firm that is predominantly engaged in trading operations as opposed to a firm that combines large trading operational with large commercial banking activities, and regardless of whether a firm uses short-term wholesale funding to fund securities inventory as opposed to securities financing transaction matched book activity. Dividing short-term wholesale funding by average risk-weighted assets helps ensure that two firms that use the same amount of short-term wholesale funding would be required to hold the same dollar amount of additional capital regardless of such differences.

To illustrate the rationale for dividing a GSIB's short-term wholesale funding by its average risk-weighted assets, assume that two GSIBs use the same

amount of short-term wholesale funding, but the first GSIB has average risk-weighted assets of $50, and the second GSIB has average risk-weighted assets of $100. If method 2's short-term wholesale funding score were based on a GSIB's short-term wholesale funding amount instead of the ratio of short-term wholesale funding to average risk-weighted assets, the two GSIBs would have equal short-term wholesale funding scores, but the second GSIB would effectively be required to hold more capital than the first GSIB (given its higher risk-weighted assets) to avoid being subject to restrictions on capital distributions and certain discretionary bonus payments as a result of its use of short-term wholesale funding. By contrast, if the surcharge formula were based on the ratio of the short-term wholesale funding amount to average risk-weighted assets, the first GSIB would have a higher short-term wholesale funding score, but the two GSIBs would be required to hold similar amounts of capital as a result of short-term wholesale funding. While the latter approach better reflects the risk that the use of short-term wholesale funding poses to the GSIB, the Board is also proposing to measure a GSIB's short-term wholesale funding amount as a dollar amount, rather than as a percentage of its average risk-weighted assets.

To arrive at its short-term wholesale funding score, a GSIB would multiply the ratio of its weighted short-term wholesale funding amount over its average risk-weighted assets by a fixed conversion factor (175). The conversion factor accounts for the fact that, in contrast to the other systemic indicators that comprise a GSIB's method 2 score, the short-term wholesale funding score does not have an associated aggregate global indicator; and is intended to weight the short-term wholesale funding amount such that the short-term wholesale funding score accounts for approximately 20 percent of the method 2 score, thereby weighting short-term wholesale funding approximately the same as the other systemic indicators within method 2, based upon estimates of current levels of short-term wholesale funding at the eight bank holding companies currently identified as GSIBs.

This fixed conversion factor was developed using 2013 and 2014 data on short-term wholesale funding sources from the FR 2052a for the eight firms currently identified as GSIBs under the proposed methodology, average risk-weighted assets as of 2013, and the year-end 2013 aggregate global indicator amounts for the size, interconnectedness, complexity, and cross-jurisdictional activity systemic indicators. Using this data, the total weighted basis points for the size, interconnectedness, complexity, and cross-jurisdictional activity systemic indicator scores for the firms currently identified as GSIBs were calculated. Given that this figure is intended to comprise 80 percent of the method 2 score, the weighted basis points accounting for the remaining 20 percent of the method 2 score were determined. The aggregate estimated short-term wholesale funding amount over average risk-weighted assets for the firms currently identified as GSIBs and the total weighted basis points that would equate to 20 percent of a firm's method 2 score were used to determine the fixed conversion factor.

A fixed conversion factor is intended to facilitate one of the goals of the incorporation of short-term wholesale funding into the GSIB surcharge framework, which is to provide incentives for GSIBs to decrease their use of this less stable form of funding. To the extent that a GSIB reduces its use of short-term wholesale funding, its short-term wholesale funding score will decline, even if GSIBs in the aggregate reduce their use of short-term wholesale funding. As noted in section II.G above, to the extent that GSIBs' use of short-term wholesale funding and the aggregate global indicator amounts change over time, the Board will continue to evaluate whether the proposed method achieves the goals of the proposal.

Given that the short-term wholesale funding score does not have an associated aggregate global indicator amount, the Board proposes that the ratio of a GSIB's weighted short-term wholesale funding amount to its average risk-weighted assets serve as an alternative means of scaling its short-term wholesale funding amount.

Question 32. What are commenters' views on the proposed method of determining a GSIB's short-term wholesale funding score? What other specific approaches should be used to ensure that a GSIB's reliance on short-term wholesale funding is adequately measured? Should a GSIB calculate its short-term wholesale funding score with or without reference to average risk-weighted assets? For example, should the Board consider an approach similar to the BCBS global framework whereby a GSIB's short-term wholesale funding amount would be considered as against the aggregate short-term wholesale funding amount for all GSIBs? What approach would be most consistent with the Board's view that the financial stability risks associated with short-term wholesale funding are generally comparable regardless of a firm's average risk-weighted assets?

Question 33. What are commenters' views regarding the use of a fixed conversion factor to determine a GSIB's short-term wholesale funding score? Should the Board consider using a conversion factor that would, like the aggregate global systemic indicators, change on an annual basis?

IV. Amendments to the FR Y–15

In the near future, the Board intends to propose modifications to the FR Y–15 to include disclosure of bank holding companies' systemic indicator scores and information pertaining to GSIBs' short-term wholesale funding scores, as calculated under the proposal. Until those reporting form changes are proposed and finalized, the Board anticipates that bank holding companies would collect and retain data necessary to determine their short-term wholesale funding scores.

V. Modifications to Related Rules

The Board, along with the FDIC and the OCC, recently issued a final rule imposing enhanced supplementary leverage ratio standards on certain bank holding companies and their subsidiary insured depository institutions.[44] The enhanced supplementary leverage ratio standards applied to top-tier U.S. bank holding companies with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody (covered BHCs), as well as insured depository institution subsidiaries of the covered BHCs. The enhanced standards imposed a 2 percent leverage ratio buffer similar to the capital conservation buffer above the minimum supplementary leverage ratio requirement of 3 percent on the covered BHCs, and also required insured depository institution subsidiaries of covered BHCs to maintain a supplementary leverage ratio of at least 6 percent to be well capitalized under the prompt corrective action framework.

In connection with this proposal, the Board is proposing to revise the terminology used to identify the firms subject to the enhanced supplementary leverage ratio standards to reflect the proposed GSIB surcharge framework. Specifically, the Board is proposing to replace the use of ''covered BHC'' with firms identified as GSIBs using the methodology of this proposal within the prompt corrective action provisions of Regulation H (12 CFR part 208), as well as within the Board's regulatory capital

[44] 78 FR 24528 (May 1, 2014).

rule. The eight U.S. top-tier bank holding companies that are ''covered BHCs'' under the enhanced supplementary leverage ratio rule's definition are the same eight U.S. top-tier bank holding companies that would be identified as GSIBs under this proposal. These changes would simplify the Board's regulations by removing overlapping definitions, and would not result in a material change in the provisions applicable to these bank holding companies.

VI. Regulatory Analysis

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. For purposes of calculating burden under the Paperwork Reduction Act, a ''collection of information'' involves 10 or more respondents. Any collection of information addressed to all or a substantial majority of an industry is presumed to involve 10 or more respondents (5 CFR 1320.3(c), 1320.3(c)(4)(ii)). The Board estimates there are fewer than 10 respondents, and these respondents do not represent all or a substantial majority of U.S. top-tier bank holding companies. Therefore, no collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

B. Regulatory Flexibility Act

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed above, this proposed rule is designed to identify U.S. bank holding companies that are GSIBs and to apply capital surcharges to the GSIBs that are calibrated to their systemic risk profiles. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking. Under regulations issued by the Small Business Administration, a small entity includes a bank holding company with assets of $550 million or less (small bank holding company).[45] As of June 30, 2014, there were approximately 3,718 small bank holding companies.

The proposed rule would only apply to atop-tier bank holding company domiciled in the United States with $50 billion or more in total consolidated assets that is not a subsidiary of a non-U.S. banking organization. Bank holding companies that are subject to the proposed rule therefore substantially exceed the $550 million asset threshold at which a banking entity would qualify as a small bank holding company.

Because the proposed rule would not apply to a bank holding company with assets of $550 million or less, if adopted in final form, it would not apply to any small bank holding company for purposes of the RFA. Therefore, there are no significant alternatives to the proposed rule that would have less economic impact on small bank holding companies. As discussed above, the projected reporting, recordkeeping, and other compliance requirements of the proposed rule are expected to be small. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposed rule. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is the section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Board incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Consumer protection, Crime, Currency, Global systemically important bank, Insurance, Investments, Mortgages Reporting and recordkeeping requirements, Securities.

Board of Governors or the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

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

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

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, and 5371; 15 U.S.C. 78b, 78l(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 2. In § 208.41 remove the definition of ''covered BHC'' as added on May 1, 2014 (79 FR 24540), effective January 1, 2018, and adding in its place the definition of ''global systemically important BHC,'' to read as follows:

§ 208.41 Definitions for purposes of this subpart.

* * * * *

Global systemically important BHC has the same meaning as in § 217.2 of Regulation Q (12 CFR 217.2).

* * * * *

■ 3. In § 208.43 revise paragraphs (a)(2)(iv)(C) and (c)(1)(iv), as added on May 1, 2014 (79 FR 24540) effective January 1, 2018, by removing the words ''covered BHC'' and adding in their place the words ''global systemically important BHC.''

[45] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 4. The authority citation for part 217 continues to read as follows:

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

■ 5. In § 217.1 revise paragraph (f)(3) to read as follows:

Subpart A—General Provisions

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

* * * * *

(f) *Timing.*

* * * * *

(3) Beginning on January 1, 2016, and subject to the transition provisions in subpart G of this part, a Board-regulated institution is subject to limitations on distributions and discretionary bonus payments with respect to its capital conservation buffer, any applicable countercyclical capital buffer amount, and any applicable GSIB surcharge, in accordance with subpart B of this part.

* * * * *

■ 6. In § 217.1 revise paragraph (f)(4), as added on May 1, 2014 (79 FR 24540) effective January 1, 2018, by removing the words ''covered BHC'' and adding in its place the words ''global systemically important BHC.''

§ 217.2 [Amended]

■ 7. In § 217.2, remove the definition of ''covered BHC'' as added on May 1, 2014 (79 FR 24540), effective January 1, 2018, add in its place the definitions of ''GSIB surcharge'' and ''Global systemically important BHC'' as follows:

Global systemically important BHC means a bank holding company that is identified as a global systemically important BHC pursuant to § 217.402.

GSIB surcharge means the capital surcharge applicable to a global systemically important BHC calculated pursuant to § 217.403.

* * * * *

§ 217.11 [Amended]

■ 8. In § 217.11 amend paragraphs (a)(2)(v) and (a)(2)(vi) and (c) by removing the words ''covered BHC'' added on May 1, 2014 (79 FR 24540) effective January 1, 2018, and adding in its place the words ''global systemically important BHC.''

■ 9. In § 217.11 revise the section heading, paragraphs (a)(4) and (a)(4)(ii) to read as follows:

§ 217.11 Capital conservation buffer and countercyclical capital buffer amount, and GSIB surcharge.

(a) * * *

(4) *Limits on distributions and discretionary bonus payments.*

* * * * *

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

* * * * *

■ 10. Amend by revising Table 1 to § 217.11 to read as follows:

TABLE 1 TO § 217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Greater than 2.5 percent plus (A) 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and (B) 100 percent of the Board-regulated institution's applicable GSIB surcharge.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus (A) 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and (B) 100 percent of the Board-regulated institution's applicable GSIB surcharge, and greater than 1.875 percent plus (A) 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and (B) 75 percent of the Board-regulated institution's applicable GSIB surcharge.	60 percent.
Less than or equal to 1.875 percent plus (A) 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and (B) 75 percent of the Board-regulated institution's applicable GSIB surcharge, and greater than 1.25 percent plus (A) 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and (B) 50 percent of the Board-regulated institution's applicable GSIB surcharge.	40 percent.
Less than or equal to 1.25 percent plus (A) 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and (B) 50 percent of the Board-regulated institution's applicable GSIB surcharge, and greater than 0.625 percent plus (A) 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and (B) 25 percent of the Board-regulated institution's applicable GSIB surcharge.	20 percent.
Less than or equal to 0.625 percent plus (A) 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and (B) 25 percent of the Board-regulated institution's applicable GSIB surcharge.	0 percent.

§ 217.11 [Amended]

■ 11. In § 217.11 redesignate paragraph (c) added on May 1, 2014 (79 FR 24540) effective January 1, 2018, as paragraph (d) and add new paragraph (c) to read as follows:

(c) *GSIB surcharge.* A global systemically important BHC must use its GSIB surcharge calculated in accordance with subpart H of this part for purposes of determining its maximum payout ratio under Table 1 to § 217.11.

■ 12. Revise § 217.300 to read as follows:

§ 217.300 Transitions.

(a) *Capital conservation and countercyclical capital buffer and GSIB surcharge.*

(1) From January 1, 2014 through December 31, 2015, a Board-regulated institution is not subject to limits on distributions and discretionary bonus payments under § 217.11 of subpart B of this part notwithstanding the amount of its capital conservation buffer or any applicable countercyclical capital buffer amount or GSIB surcharge.

(2) Notwithstanding § 217.11, beginning January 1, 2016 through December 31, 2018 a Board-regulated institution's maximum payout ratio

shall be determined as set forth in Table 1 to § 217.300.

TABLE 1 TO § 217.300

Transition period	Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Calendar year 2016	Greater than 0.625 percent (plus (A) 25 percent of any applicable countercyclical capital buffer amount and (B) 25 percent of any applicable GSIB surcharge).	No payout ratio limitation applies under this section.
	Less than or equal to 0.625 percent (plus (A) 25 percent of any applicable countercyclical capital buffer amount and (B) 25 percent of any applicable GSIB surcharge), and greater than 0.469 percent (plus (A) 17.25 percent of any applicable countercyclical capital buffer amount and (B) 17.25 percent of any applicable GSIB surcharge).	60 percent.
	Less than or equal to 0.469 percent (plus (A) 17.25 percent of any applicable countercyclical capital buffer amount and (B) 17.25 percent of any applicable GSIB surcharge), and greater than 0.313 percent (plus (A) 12.5 percent of any applicable countercyclical capital buffer amount and (B) 12.5 percent of any applicable GSIB surcharge).	40 percent.
	Less than or equal to 0.313 percent (plus (A) 12.5 percent of any applicable countercyclical capital buffer amount and (B) 12.5 percent of any applicable GSIB surcharge), and greater than 0.156 percent (plus (A) 6.25 percent of any applicable countercyclical capital buffer amount and (B) 6.25 percent of any applicable GSIB surcharge).	20 percent.
	Less than or equal to 0.156 percent (plus (A) 6.25 percent of any applicable countercyclical capital buffer amount and (B) 6.25 percent of any applicable GSIB surcharge).	0 percent.
Calendar year 2017	Greater than 1.25 percent (plus (A) 50 percent of any applicable countercyclical capital buffer amount and (B) 50 percent of any applicable GSIB surcharge).	No payout ratio limitation applies under this section.
	Less than or equal to 1.25 percent (plus (A) 50 percent of any applicable countercyclical capital buffer amount and (B) 50 percent of any applicable GSIB surcharge), and greater than 0.938 percent (plus (A) 37.5 percent of any applicable countercyclical capital buffer amount and (B) 37.5 percent of any applicable GSIB surcharge).	60 percent.
	Less than or equal to 0.938 percent (plus (A) 37.5 percent of any applicable countercyclical capital buffer amount and (B) 37.5 percent of any applicable GSIB surcharge), and greater than 0.625 percent (plus (A) 25 percent of any applicable countercyclical capital buffer amount and (B) 25 percent of any applicable GSIB surcharge).	40 percent.
	Less than or equal to 0.625 percent (plus (A) 25 percent of any applicable countercyclical capital buffer amount and (B) 25 percent of any applicable GSIB surcharge), and greater than 0.313 percent (plus (A) 12.5 percent of any applicable countercyclical capital buffer amount and (B) 12.5 percent of any applicable GSIB surcharge).	20 percent.
	Less than or equal to 0.313 percent (plus (A) 12.5 percent of any applicable countercyclical capital buffer amount and (B) 12.5 percent of any applicable GSIB surcharge).	0 percent.
Calendar year 2018	Greater than 1.875 percent (plus (A) 75 percent of any applicable countercyclical capital buffer amount and (B) 75 percent of any applicable GSIB surcharge).	No payout ratio limitation applies under this section.
	Less than or equal to 1.875 percent (plus (A) 75 percent of any applicable countercyclical capital buffer amount and (B) 75 percent of any applicable GSIB surcharge), and greater than 1.406 percent (plus (A) 56.25 percent of any applicable countercyclical capital buffer amount and (B) 56.25 percent of any applicable GSIB surcharge).	60 percent.
	Less than or equal to 1.406 percent (plus (A) 56.25 percent of any applicable countercyclical capital buffer amount and (B) 56.25 percent of any applicable GSIB surcharge), and greater than 0.938 percent (plus (A) 37.5 percent of any applicable countercyclical capital buffer amount and (B) 37.5 percent of any applicable GSIB surcharge).	40 percent.
	Less than or equal to 0.938 percent (plus (A) 37.5 percent of any applicable countercyclical capital buffer amount and (B) 37.5 percent of any applicable GSIB surcharge), and greater than 0.469 percent (plus (A) 18.75 percent of any applicable countercyclical capital buffer amount and (B) 18.75 percent of any applicable GSIB surcharge).	20 percent.
	Less than or equal to 0.469 percent (plus (A) 18.75 percent of any applicable countercyclical capital buffer amount and (B) 18.75 percent of any applicable GSIB surcharge).	0 percent.

■ 13. Add subpart H to part 217 to read as follows:

Subpart H—Risk-Based Capital Surcharge for Global Systemically Important Bank Holding Companies

General Provisions

Secs.
217.400 Purpose and applicability.
217.401 Definitions.
217.402 Identification as a global systemically important BHC.
217.403 GSIB surcharge.

Authority: 12 U.S.C. 5365.

General Provisions

§ 217.400 Purpose and applicability.

(a) *Purpose.* This subpart implements certain provisions of section 165 of the Dodd-Frank Act (12 U.S.C. 5365), by establishing a risk-based capital surcharge for certain bank holding companies that are not consolidated subsidiaries of a bank holding company or subsidiaries of a non-U.S. banking organization.

(b) *Applicability.*

(1) *Application of the calculation requirements.* Subject to the initial applicability provisions of paragraph (b)(3) of this section:

(i) A bank holding company must calculate its systemic indicator score pursuant to § 217.402 by December 31 of the year in which its total consolidated assets first equal or exceed $50 billion if it:

(A) Has total consolidated assets of $50 billion or more as of June 30 of that year, as reported on its FR Y–9C; and

(B) Is not a consolidated subsidiary of a bank holding company or a subsidiary of a non-U.S. banking organization; and

(ii) A bank holding company described in paragraph (b)(1)(i) of this section that is identified as a global systemically important BHC pursuant to § 217.402(a) must calculate its GSIB surcharge by December 31 of the year in which the bank holding company is identified as a global systemically important BHC.

(2) *Applicability of the GSIB surcharge and any adjustments thereto.* (i) *First GSIB surcharge.* Subject to the transition provisions of § 217.300(a) and the initial applicability provisions of paragraph (b)(3) of this section, a global systemically important BHC must use its GSIB surcharge (as calculated in the first year that the bank holding company was identified as a global systemically important BHC) for purposes of determining its maximum payout ratio under Table 1 to § 217.11 beginning on the January 1 of the year that is one full calendar year after it is identified as a global systemically important BHC.

(ii) *Increase in GSIB surcharge.* To the extent that a global systemically important BHC's GSIB surcharge increases relative to its GSIB surcharge in effect for the current year, the global systemically important BHC must determine the maximum payout ratio under Table 1 to § 217.11:

(A) Using the current year's GSIB surcharge through December 31 of the following the calendar year; and

(B) Using the increased GSIB surcharge beginning on January 1 of the year that is one full calendar year after the increased GSIB surcharge was calculated.

(iii) *Decrease in GSIB surcharge.* To the extent that a global systemically important BHC's GSIB surcharge decreases relative to the surcharge in effect for the current year, the global systemically important BHC must determine the maximum payout ratio required under Table 1 to § 217.11 using the decreased surcharge beginning on January 1 of the immediately following calendar year.

(3) *Initial applicability of the calculation and surcharge requirements.*

(i) A bank holding company must calculate its systemic indicator score pursuant to § 217.402 by December 31, 2015 if it:

(A) Had total consolidated assets of $50 billion or more as of June 30, 2014 as reported on the FR Y–9C, and

(B) Is not a consolidated subsidiary of a bank holding company or a subsidiary of a non-U.S. banking organization.

(ii) A bank holding company described in (b)(3)(i) of this section that is identified as a global systemically important BHC pursuant to § 217.402(a) by December 31, 2015, must calculate its GSIB surcharge by December 31, 2015, provided that:

(A) For the GSIB surcharge calculated by December 31, 2015, a bank holding company must calculate its weighted short-term wholesale funding amount (defined in § 217.403(c)) based on the average of its short-term wholesale funding amount calculated for each business day of the third quarter of 2015, divided by the bank holding company's average risk-weighted assets calculated for each business day of the third quarter of 2015; and multiplied by 175;

(B) For the GSIB surcharge calculated by December 31, 2016, the bank holding company must calculate its weighted short-term wholesale funding amount (defined in § 217.403(c)) based on the average of its short-term wholesale funding amount calculated for each business day of the third and fourth quarters of 2015, divided by the bank holding company's average risk-weighted assets for each business day of the third and fourth quarters of 2015; and multiplied by 175; and

(C) For the GSIB surcharge calculated by December 31, 2017, and thereafter, the bank holding company must calculate its weighted short-term wholesale funding amount (defined in § 217.403(c)) based on the average of its short-term wholesale funding amount calculated for each business day of the previous calendar year.

(iii) Subject to the transition provisions of § 217.300(a):

(A) A bank holding company that is identified as a global systemically important BHC pursuant to § 217.402(a) by December 31, 2015, must use its GSIB surcharge for purposes of determining its maximum payout ratio under Table 1 to § 217.11 beginning on January 1, 2016;

(B) The GSIB surcharge that the bank holding company initially uses to determine its maximum payout ratio under Table 1 to § 217.11 is the surcharge that the bank holding company calculated by December 31, 2015; and

(C) The surcharge that the bank holding company uses to determine its maximum payout ratio under Table 1 to § 217.11 for each year following is determined in accordance with paragraph (b)(2) of this section.

(c) *Reservation of authority.* (1) The Board may apply this subpart to any Board-regulated institution, in whole or in part, by order of the Board based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(2) The Board may adjust the amount of the GSIB surcharge applicable to a global systemically important BHC, or extend or accelerate any compliance date of this subpart, if the Board determines that the adjustment, extension, or acceleration is appropriate in light of the capital structure, size, complexity, risk profile, and scope of operations of the global systemically important BHC. In increasing the size of the GSIB surcharge for a global systemically important BHC, the Board will apply notice and response procedures in 12 CFR 263.202.

§ 217.401 Definitions.

As used in this subpart:

(a) *Aggregate global indicator amount* means, for each systemic indicator, the annual dollar figure published by the Board that represents the sum of the systemic indicator scores of:

(i) The 75 largest global banking organizations, as measured by the Basel Committee on Banking Supervision, and (ii) any other banking organization that

the Basel Committee on Banking Supervision includes in its sample total for that year.

(b) *Assets under custody* means assets held as a custodian on behalf of customers, as reported by a bank holding company on the FR Y–15.

(c) *Average risk-weighted assets* means the four-quarter average of the measure of total risk-weighted assets associated with the lower of the bank holding company's common equity tier 1 risk-based capital ratios, as reported on the bank holding company's FR Y–9C for each quarter of the previous calendar year, as available.

(d) *Cross-jurisdictional claims* means foreign claims on an ultimate risk basis, as reported by a bank holding company on the FR Y–15.

(e) *Cross-jurisdictional liabilities* means total cross-jurisdictional liabilities, as reported by a bank holding company on the FR Y–15.

(f) *Intra-financial system assets* means total intra-financial system assets, as reported by a bank holding company on the FR Y–15.

(g) *Intra-financial system liabilities* means total intra-financial system liabilities, as reported by a bank holding company on the FR Y–15.

(h) *Level 3 assets* means assets valued using Level 3 measurement inputs, as reported by a bank holding company on the FR Y–15.

(i) *Notional amount of over-the-counter (OTC) derivatives* means the total notional amount of OTC derivatives as reported by a bank holding company on the FR Y–15.

(j) *Payments activity* means payments activity as reported by a bank holding company on the FR Y–15.

(k) *Securities outstanding* means total securities outstanding as reported by a bank holding company on the FR Y–15.

(l) *Systemic indicator* means any of the following indicators included on the FR Y–15:

(1) Total exposures;

(2) Intra-financial system assets;

(3) Intra-financial system liabilities;

(4) Securities outstanding;

(5) Payments activity;

(6) Assets under custody;

(7) Underwritten transactions in debt and equity markets;

(8) Notional amount of over-the-counter (OTC) derivatives;

(9) Trading and available-for-sale (AFS) securities;

(10) Level 3 assets;

(11) Cross-jurisdictional claims; or

(12) Cross-jurisdictional liabilities.

(m) *Total exposures* means total exposures as reported by a bank holding company on the FR Y–15 (as revised to be consistent with the measure used to calculate the supplementary leverage ratio).

(n) *Trading and AFS securities* means total adjusted trading and available-for-sale securities as reported by a bank holding company on the FR Y–15.

(o) *Underwritten transactions in debt and equity markets* means total underwriting activity as reported by a bank holding company on the FR Y–15.

§ 217.402 Identification as a global systemically important BHC.

(a) *General.* A bank holding company subject to this subpart is a global systemically important BHC if the sum of its systemic indicator scores for the twelve systemic indicators set forth in Table 1 of this section, as determined under paragraph (b) of this section, equals or exceeds 130 basis points. A bank holding company must calculate the sum of its systemic indicator scores on an annual basis by December 31 of each year.

(b) *Systemic indicator score.* (1) Except as provided in paragraph (b)(2) of this section, the systemic indicator score in basis points for a given systemic indicator is equal to:

(i) The ratio of:

(A) The amount of the systemic indicator, as reported on the bank holding company's most recent FR Y–15; to

(B) The aggregate global indicator amount for that systemic indicator published by the Board in the fourth quarter of that year;

(ii) Multiplied by 10,000; and

(iii) Multiplied by the indicator weight corresponding to the systemic indicator as set forth in Table 1 of this section.

(2) *Maximum substitutability score.* The sum of the systemic indicator scores for the indicators in the substitutability category (assets under custody, payments systems activity, and underwriting activity) is capped at 100 basis points.

TABLE 1

Category	Systemic indicator	Indicator weight (percent)
Size	Total exposures	20
Interconnectedness	Intra-financial system assets	6.67
	Intra-financial system liabilities	6.67
	Securities outstanding	6.67
Substitutability	Payments activity	6.67
	Assets under custody	6.67
	Underwritten transactions in debt and equity markets	6.67
Complexity	Notional amount of over-the-counter (OTC) derivatives	6.67
	Trading and available-for-sale (AFS) securities	6.67
	Level 3 assets	6.67
Cross-jurisdictional activity	Cross-jurisdictional claims	10
	Cross-jurisdictional liabilities	10

§ 217.403 GSIB surcharge.

(a) *General.* A company identified as a global systemically important BHC pursuant to § 217.402(a) must calculate its GSIB surcharge on an annual basis by December 31 of each year. The GSIB surcharge is equal to the greater of:

(1) The method 1 surcharge calculated in accordance with paragraph (b) of this section; and

(2) The method 2 surcharge calculated in accordance with paragraph (c) of this section.

(b) *Method 1 surcharge*—(1) *General.* A bank holding company's method 1 surcharge is the amount set forth in Table 2 that corresponds to the sum of the bank holding company's systemic indicator scores for the twelve systemic indicators included in Table 1 of § 217.402, calculated pursuant to § 217.402.

TABLE 2—METHOD 1 SURCHARGE

Method 1 score	Method 1 surcharge (percent)
Below 130	0.0
130–229	1.0
230–329	1.5
330–429	2.0
430–529	2.5
530–629	3.5

(2) *Higher method 1 surcharges.* To the extent that the score of a global systemically important BHC equals or exceeds 630 basis points, the method 1 surcharge equals the sum of:

(i) 4.5 percent; and

(ii) An additional 1.0 percent for each 100 basis points that the BHC's score exceeds 630 basis points.

(c) *Method 2 surcharge*—(1) *General.* A bank holding company's method 2 surcharge is the percentage amount set forth in Table 3 that corresponds to the bank holding company's method 2 score.

TABLE 3—METHOD 2 SURCHARGE

Method 2 score	Method 2 surcharge (percent)
Below 130	0.0
130–229	1.0
230–329	1.5
330–429	2.0
430–529	2.5
530–629	3.0
630–729	3.5
730–829	4.0
830–929	4.5
930–1029	5.0
1030–1129	5.5

(2) *Higher method 2 surcharges.* To the extent that the score of a global systemically important BHC equals or exceeds 1130 basis points, the method 2 surcharge equals the sum of:

(i) 5.5 percent; and

(ii) An additional 0.5 percent for each 100 basis points that the BHC's score exceeds 630 basis points.

(3) *Method 2 score.* A bank holding company's method 2 score is equal to:

(i) The sum of:

(A) The bank holding company's systemic indicator scores for the nine systemic indicators included in table 4 of paragraph (c)(4) of this section, each weighted as described therein; and

(B) The bank holding company's short-term wholesale funding score, calculated pursuant to paragraph (c)(5) of this section;

(ii) Multiplied by 2.

(4) *Systemic indicator score.* A bank holding company's score for a systemic indicator is equal to:

(i) The ratio of:

(A) The amount of the systemic indicator, as reported on the bank holding company's most recent FR Y–15; to

(B) The aggregate global indicator amount for that systemic indicator published by the Board in the fourth quarter of that year;

(iii) Multiplied by 10,000; and

(iv) Multiplied by the indicator weight corresponding to the systemic indicator as set forth in Table 4 of this section.

TABLE 4

Category	Systemic indicator	Indicator weight (percent)
Size	Total exposures	20
Interconnectedness	Intra-financial system assets	6.67
	Intra-financial system liabilities	6.67
	Securities outstanding	6.67
Complexity	Notional amount of over-the-counter (OTC) derivatives	6.67
	Trading and available-for-sale (AFS) securities	6.67
	Level 3 assets	6.67
Cross-jurisdictional activity	Cross-jurisdictional claims	10
	Cross-jurisdictional liabilities	10

(5) *Short-term wholesale funding score*—(i) *General.* Except as provided in § 217.400(b)(3)(ii), a bank holding company's short-term wholesale funding score is equal to:

(A) The average of the bank holding company's weighted short-term wholesale funding amount (defined in paragraph (c)(5)(ii) of this section), calculated for each business day of the previous calendar year;

(B) Divided by the bank holding company's average risk-weighted assets; and

(C) Multiplied by a fixed factor of 175.

(ii) *Weighted short-term wholesale funding amount.* (A) To calculate its weighted short-term wholesale funding amount, a bank holding company must calculate the amount of its short-term wholesale funding on a consolidated basis for each business day and weigh the components of short-term wholesale funding in accordance with Table 5 of this section.

(B) Short-term wholesale funding includes the following items, each as defined in paragraph (c)(5)(iii) of this section:

(*1*) All funds that the bank holding company must pay under each secured funding transaction, other than an operational deposit, with a remaining maturity of 1 year or less;

(*2*) All funds that the bank holding company must pay under all unsecured wholesale funding, other than an operational deposit, with a remaining maturity of 1 year or less;

(*3*) The fair value of an asset as determined under GAAP that a bank holding company must return under a covered asset exchange with a remaining maturity of 1 year or less;

(4) The fair value of an asset as determined under GAAP that the bank holding company must return under a short position; and

(*5*) All brokered deposits and all brokered sweep deposits held at the bank holding company provided by a retail customer or counterparty.

(C) For purposes of calculating the short-term wholesale funding amount and the components thereof, a bank holding company must assume that each asset or transaction described in paragraph (c)(5)(ii)(B) of this section matures in accordance with the criteria set forth in 12 CFR 249.31.

TABLE 5

Component of short-term wholesale funding	Remaining maturity of 30 days of less or no maturity (percent)	Remaining maturity of 31 to 90 days (percent)	Remaining maturity of 91 to 180 days (percent)	Remaining maturity of 181 to 365 days (percent)
Secured funding transaction secured by a level 1 liquid asset	25	10	0	0
(1) Secured funding transaction secured by a level 2A liquid asset; (2) Unsecured wholesale funding where the customer or counterparty is not a financial sector entity or a consolidated subsidiary thereof; (3) Brokered deposits and brokered sweep deposits provided by a retail customer or counterparty; (4) Covered asset exchanges involving the future exchange of a Level 1 asset for a Level 2A asset; and (5) Short positions where the borrowed security is either a Level 1 or Level 2A asset	50	25	10	0
(1) Secured funding transaction secured by a level 2B liquid asset (2) Covered asset exchanges and short positions (other than those described in the category above)	75	50	25	10
(1) Unsecured wholesale funding where the customer or counterparty is a financial sector entity or a consolidated subsidiary thereof; and (2) Any other component of short-term wholesale funding	100	75	50	25

(iii) *Short-term wholesale funding definitions.* The following definitions apply for purposes of paragraph (c)(5)(ii)(B) of this section.

(A) *Brokered deposit* means any deposit held at a bank holding company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)), and includes a reciprocal brokered deposit and a brokered sweep deposit.

(B) *Brokered sweep deposit* means a deposit held at a bank holding company by a customer or counterparty through a contractual feature that automatically transfers to the bank holding company from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

(C) *Covered asset exchange* means a transaction in which a bank holding company has provided assets of a given liquidity category to a counterparty in exchange for assets of a higher liquidity category, and the bank holding company and the counterparty agreed to return such assets to each other at a future date. Categories of assets, in descending order of liquidity, are level 1 liquid assets, level 2A liquid assets, level 2B liquid assets, and assets that are not HQLA. Covered asset exchanges do not include secured funding transactions.

(D) *Consolidated subsidiary* means a company that is consolidated on the balance sheet of a bank holding company or other company under GAAP.

(E) *Deposit insurance* means deposit insurance provided by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(F) *Financial sector entity* has the meaning set forth in 12 CFR 249.3.

(G) *GAAP* means generally accepted accounting principles as used in the United States.

(H) *High-quality liquid asset (HQLA)* has the meaning set forth in 12 CFR 249.3.

(I) *Level 1 liquid asset* is an asset that qualifies as a level 1 liquid asset pursuant to 12 CFR 249.20(a).

(J) *Level 2A liquid asset* is an asset that qualifies as a level 2A liquid asset pursuant to 12 CFR 249.20(b).

(K) *Level 2B liquid asset* is an asset that qualifies as a level 2B liquid asset pursuant to 12 CFR 249.20(c).

(L) *Operational deposit* has the meaning set forth in 12 CFR 249.3.

(M) *Retail customer or counterparty* has the meaning set forth in 12 CFR 249.3.

(N) *Secured funding transaction* means any funding transaction that is subject to a legally binding agreement and gives rise to a cash obligation of the bank holding company to a counterparty that is secured under applicable law by a lien on assets owned by the bank holding company, which gives the counterparty, as holder of the lien, priority over the assets in the event the bank holding company enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, loans of collateral to the bank holding company's customers to effect short positions, other secured loans, and borrowings from a Federal Reserve Bank.

(O) *Short position* means a transaction in which a bank holding company has borrowed or otherwise obtained a security from a counterparty and sold that security to sell to another counterparty, and the bank holding company must return the security to the initial counterparty in the future.

(P) *Unsecured wholesale funding* means a liability or general obligation, including a wholesale deposit, of the bank holding company to a wholesale customer or counterparty that is not secured under applicable law by a lien on assets owned by the bank holding company.

(Q) *Wholesale customer or counterparty* means a customer or counterparty that is not a retail customer or counterparty.

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

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–29330 Filed 12–17–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2014–1027; Notice No. 14–09]

RIN 2120–AK24

Transport Airplane Fuel Tank and System Lightning Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend certain airworthiness regulations for transport category airplanes regarding lightning protection of fuel tanks and

systems. This action would establish design requirements for both normal conditions and possible failures of fuel tank structure and systems that could lead to fuel tank explosions, add new maintenance requirements related to lightning protection features, and impose specific requirements for airworthiness limitations in the instructions for continued airworthiness. We would create performance-based standards for prevention of catastrophic fuel vapor ignition caused by lightning by regulating the risk due to both ignition sources and fuel tank flammability. This change would allow designers to take advantage of flammability reduction technologies whose effectiveness was not foreseen when earlier revisions to these rules were written. This change would also relieve some of the administrative burdens created by the current regulations. These proposed amendments are based on recommendations from the Large Airplane Fuel System Lightning Protection Aviation Rulemaking Committee (Lightning ARC).

DATES: Send comments on or before March 18, 2015.

ADDRESSES: Send comments identified by docket number FAA–2014–1027 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 docket, 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 go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Massoud Sadeghi, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2117; facsimile (425) 227–1149; email *massoud.sadeghi@faa.gov*.

For legal questions concerning this action, contact Sean Howe, Office of the Regional Counsel, ANM–7, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2591; facsimile (425) 227–1007; email *Sean.Howe@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General Requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

I. Overview of Proposed Rule

The FAA proposes to amend the airworthiness regulations in Title 14, Code of Federal Regulations (14 CFR) part 25 related to lightning protection for fuel systems [1] (including fuel tank structure [2] and systems.[3]) This action would remove the requirement for the prevention of lightning ignition sources from § 25.981(a)(3) at Amendment 25–102 and add a new requirement to § 25.954 for the prevention of ignition due to lightning.

We propose to revise § 25.954 to expand and clarify its objective and to modify it to meet current knowledge about lightning and state-of-the-art airplane design. This new requirement would reduce the risk of fuel tank ignition by requiring applicants to account for both ignition sources and fuel tank flammability limits established by existing regulations. The proposed amendments would adopt a performance-based standard to prevent catastrophic fuel tank vapor ignition due to lightning, rather than focus solely on the prevention of ignition sources.

We propose to insert an exception into § 25.981(a)(3) to remove its applicability to lightning protection. Inclusion of lightning in that section has resulted in recurring cases where applicants showed that compliance was impractical, leading them to seek exemptions to compliance with § 25.981 for fuel tank structural aspects. We have not issued exemptions for systems-related lightning protection, but we believe common treatment of structure- and systems-related lightning protection in the fuel system is appropriate.

To maintain the integrity of lightning protection features of airplanes certificated under the amended rules, we propose to amend part 25 appendix H to create a new requirement for applicants to establish airworthiness limitations specific to the airworthiness of fuel tank structure and systems lightning protection features.

This proposed rule would affect manufacturers who apply for type certification of new or significantly modified transport category airplanes, specifically, the airplanes' fuel tank structures and systems. It would also apply to applicants for supplemental type certificates for such modifications. This proposal would revise the part 25 regulations for design and maintenance of lightning protection features for fuel tank structure and systems.

[1] Fuel system, in the context of this NPRM, includes any component within either the fuel tank structure or the fuel tank systems and any other airplane structure or system components that are penetrating, located within, or connected to the fuel tanks.

[2] Fuel tank structure, in the context of this NPRM, includes structural members of the fuel tank such as airplane skins, access panels, joints, ribs, spars, stringers, and associated fasteners, brackets, coatings and sealant.

[3] Fuel tank systems, or systems, in the context of this NPRM, include tubing, components, and wiring that are penetrating, located within, or connected to the fuel tanks.

II. Background

A. Statement of the Problem

We have found that compliance with § 25.981(a)(3), as it is currently written, is not always practical. The impracticality has led applicants to petition for exemptions and the FAA to impose special conditions to achieve the intended level of safety of the rule, which has created an administrative burden on industry and the FAA.

B. History of Lightning-Related Fuel Tank Explosion Events

Lightning strikes to airplanes do occur, particularly when operating in instrument meteorological conditions. When lightning strikes an airplane, high transient current is conducted in the airplane structure. The transient current can melt, burn, and deform airplane parts and structure where the lightning attaches to the airplane. This current is also conducted through the airplane structure between the lightning attachment points on the airplane. The conducted lightning transient current can also induce voltage and current on airplane wiring, tubes, and control mechanisms. Melting, burning, arcing, or sparking due to conducted lightning current or voltage can result in fuel vapor ignition if they occur in a flammable environment.

On June 26, 1959, a Lockheed L–1649A Constellation was struck by lightning, which caused explosions in two of its fuel tanks, resulting in a crash. This airplane was fueled with aviation gasoline. Prior to this accident, government and industry had conducted research into the possible effects of lightning on airplane fuel tanks, but the scope of this research had been limited to the melting of integral fuel tank skin, and hot-spot formation.

Fuel vapor ignition due to lightning was the probable cause of a Boeing 707 accident that occurred near Elkton, Maryland on December 8, 1963. At the time of its certification, the 707 was not required to demonstrate effective lightning protection for fuel systems. Following the 707 accident, government and industry performed substantial research to determine the factors that could result in lightning-related fuel vapor ignition. However, most of this research focused on lightning burn-through for metal fuel tank structure, and lightning-related ignition of fuel vapor in fuel vents.

On December 23, 1971, lightning struck a Lockheed L–188A Electra, which led to a fire and separation of the right wing. Since the L–188A was certified by the FAA in 1958, the type did not benefit from the additional attention given to airplane fuel tanks after § 25.954 was published in 1967.

On May 9, 1976, a Boeing 747 crashed during descent into Madrid, Spain following a lightning strike to the airplane. The investigation of this accident found evidence that fuel vapor ignition could have been caused by lightning-induced sparking at a motor-driven fuel valve.

In three of the four accidents noted above, investigations found that the airplane fuel tanks contained either aviation gasoline or a mixture of Jet A kerosene-type fuels and higher volatility Jet B/JP–4 fuels. The fuel type involved in the 1971 Electra accident was not identified. The investigations for the other three accidents determined that the fuel mixtures would be flammable at the temperatures and altitudes that the airplanes were flying at the time of the lightning strikes. During the 1980s the use of Jet B/JP–4 fuels began to decline and those fuels became nearly obsolete in the 1990s.

Since the last lightning-related airplane fuel tank explosion (1976), the understanding of lightning effects on airplane fuel tanks and systems has increased significantly, and no further events have occurred even though the number of flight hours since the 1976 accident (approaching 1 billion) is more than 8 times that which preceded that event (less than 120 million).

Methods for preventing ignition sources due to lightning strikes are mature and are based on years of research into natural lightning characteristics and effects on airplane structure and systems. The results have been documented in a large body of literature and formalized into SAE standards such as ARP5412,[4] ARP5414,[5] and ARP5416.[6] The FAA has accepted use of these standards through Advisory Circulars (AC) 20–53B, *Protection of Aircraft Fuel Systems Against Fuel Vapor Ignition Caused by Lightning,* and AC 20–155, *SAE Documents to Support Aircraft Lightning Protection Certifications.* The International Conference on Lightning and Static Electricity (ICOLSE), National Aeronautics and Space Administration (NASA), the European Organization on Commercial Aircraft Equipment (EUROCAE), and other industry forums have published much of the supporting research. A high level of communication among airplane lightning specialists worldwide ensures that designers and certification authorities are continually informed of advances in lightning protection technology and application of this technology to new designs.

C. Advancement of Current Regulations and Associated Guidance

Following the 1963 Boeing 707 Elkton accident, the FAA adopted new fuel system lightning protection regulations. These regulations were implemented for transport category airplanes in § 25.954 at Amendment 25–14, *Fuel system lightning protection.* Section 25.954 states:

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; and

(c) Corona and streamering at fuel vent outlets.

This regulation requires lightning protection regardless of the likelihood that lightning would strike the airplane. This regulation does not acknowledge that lightning protection features could fail or become ineffective. The regulation contains no requirement for fault-tolerant fuel system lightning protection or for any evaluation of probabilities of failures related to the lightning protection features.

Following the 1976 Madrid Boeing 747 accident, the FAA issued a number of airworthiness directives to address possible sources of ignition that were found during the investigation. The FAA subsequently developed further guidance for airplane fuel system lightning protection. Specifically, the FAA revised AC 20–53, *Protection of Airplane Fuel Systems Against Fuel Vapor Ignition Due to Lightning.* This AC has been revised twice since its original issue. These documents added emphasis regarding lightning protection of fuel system components such as fuel tubes, fuel quantity systems, and fuel filler caps.

On July 17, 1996, a Boeing 747 operating as TWA Flight 800 was involved in an in-flight breakup after takeoff. The ensuing investigation determined that the center wing fuel tank exploded due to an unknown ignition source. Following the Flight 800 accident, the FAA reviewed the transport airplane fleet history and determined that fail-safe design principles had not been properly applied to prevent ignition sources in fuel tanks and application of the existing rules had not been adequate to

[4] ARP5412, *Aircraft Lightning Environment and Related Test Waveforms,* SAE International, November 1999.

[5] ARP5414, *Aircraft Lightning Zoning,* SAE International, December 1999.

[6] ARP5416, *Aircraft Lightning Test Methods,* SAE International, March 2005.

prevent fuel tank explosions. The FAA also found that preventing ignition sources throughout the life cycle of a transport category airplane was an extremely difficult task and agreed with National Transportation Safety Board (NTSB) recommendations to also reduce or eliminate fuel tank flammability.

1. Amendment 25–102

In January 1998 the FAA tasked [7] an Aviation Rulemaking Advisory Committee (ARAC) to provide specific recommendations and propose regulatory text that would eliminate or significantly reduce the hazards associated with explosive vapors in transport category airplane fuel tanks. Under the tasking, the proposed regulatory text was to ensure that new type designs of transport category airplanes are designed and operated so that during normal operation (up to maximum certified operating temperatures) the presence of explosive fuel vapor in all tanks is eliminated, significantly reduced, or controlled to the extent that there could not be a catastrophic event. The ARAC concluded [8] it was not practical to eliminate fuel tank flammability. They determined that the safety level of unheated aluminum main fuel tanks on airplanes using Jet A type fuel was adequate, and recommended that fuel tank flammability be limited to that level.

In May 2001 the FAA adopted Amendment 25–102 (66 FR 23086–23131) revising § 25.981, *Fuel tank ignition prevention,* which was intended to prevent future fuel tank explosions. This amendment adopted a new § 25.981(a)(3), which eliminated ambiguity as to the necessary methods of compliance with the previously established requirements of §§ 25.901 and 25.1309. As stated in AC 25.981–1C, ''. . . in order to eliminate any ambiguity as to the restrictions on latent failures, § 25.981(a)(3) explicitly requires that any anticipated latent failure condition not result in the airplane being one failure away from a catastrophic fuel tank ignition.''

This new paragraph added the requirement that the fuel tank design address potential failures that could cause ignition sources within the fuel system. Section 25.981(a)(3) requires consideration of factors such as aging, wear, and maintenance errors as well as the existence of single failures, combinations of failures not shown to be extremely improbable, and single failures in combination with latent failures to account for the cause of many ignition sources in fuel tanks and deficiencies in the existing regulations.

Section 25.981(a)(3) states that no ignition source may be present at each point in the fuel tank or fuel tank system where catastrophic failure could occur due to ignition of fuel or vapors. This must be shown by demonstrating that an ignition source could not result from each single failure, from each single failure in combination with each latent failure condition not shown to be extremely remote, and from all combinations of failures not shown to be extremely improbable. The effects of manufacturing variability, aging, wear, corrosion, and likely damage must be considered.

While lightning was not listed as a probable cause of the Flight 800 accident, the FAA's accident and incident historical review of fuel tank explosions resulted in our finding that improving fuel tank safety required preventing ignition from all sources, including lightning. Potential ignition sources due to lightning must be considered as part of compliance with this regulation, as discussed in the rulemaking preamble for § 25.981(a)(3) and the associated AC 25.981–1. This regulation effectively requires fail-safe ignition prevention means, like redundant features, or monitoring and indication of failures, be provided. However, in applying this rule to recent certification programs, we found that for the purpose of lightning protection, providing redundant features is not always practical. For example, failures of lightning protection features could remain latent for years between inspections, thereby exposing the fuel tank to the risk of ignition due to lightning. Typically these latent failures cannot be shown to be extremely remote considering the long inspection intervals.

The preamble to Amendment 25–102 stated the FAA's assumption that environmental conditions such as lightning are present when failures of systems occur. Consistent with this approach, AC 25.981–1C also states that applicants should assume that a lightning attachment could occur at any time (probability of lightning = 1). In addition, industry and FAA practice had been to assume that a defined set of severe lightning current components would be associated with every lightning strike to the aircraft. AC 25.981–1C, as well as the user's manual [9] associated with AC 20–53 that defines guidance for compliance to § 25.954, also states that applicants should assume that the fuel tank is always flammable (probability = 1).

Amendment 25–102 also introduced § 25.981(b) requirements to identify critical design configuration control limitations (CDCCLs) to prevent development of ignition sources within the fuel tank systems.

When Amendment 25–102 was adopted, the FAA considered it practical to limit fuel tank flammability to that of an unheated aluminum fuel tank. As recommended by the ARAC, the amendment adopted § 25.981(c) that required minimizing the flammability of airplane fuel tanks, or mitigating the effects of an explosion such that any damage from a fire or explosion would not prevent continued safe flight and landing. The FAA considered flammability control, through the use of fuel tank designs that provided cooling of the tanks using ventilation, as well as locating heat sources away from fuel tanks, to be practical means of minimizing fuel tank flammability. The FAA explained in the preamble to the rule that the intent was to limit fuel tank flammability to that of an unheated aluminum wing fuel tank. This regulation did not specifically require fuel tank inerting, nor did the regulation state specific fuel tank flammability limits. The preamble to Amendment 25–102 stated:

> As noted previously in this preamble, we tasked the ARAC on July 14, 2000 (65 FR 43800), to evaluate both on-board and ground-based fuel tank inerting systems. If further improvement is found to be practicable, we may consider initiating further rulemaking to address such improvements.

At the time we developed Amendment 25–102 (*i.e.,* 1998–2001), the FAA and industry were still exploring the dynamics of tank flammability and the fleet average flammability exposure for transport airplane fuel tanks. Evaluation of the technical and economic viability of fuel tank inerting systems for commercial transport airplanes was also in its early stages at that time. After promulgation of Amendment 25–102, the FAA and industry continued research and discussion of the measurement and modeling of fuel tank flammability and development of practical means to reduce or eliminate flammability in transport airplane fuel tanks. This

[7] Aviation Rulemaking Advisory Committee—New Task: ''Prevention of Fuel Tank Explosions;'' published in the **Federal Register** January 23, 1998 (63 FR 3614–3615).

[8] Aviation Rulemaking Advisory Committee: ''Fuel Tank Harmonization Working Group—Final Report;'' July 1998. Available in the docket.

[9] DOT/FAA/CT–83/3. *User's manual for AC–20–53A Protection of Airplane Fuel Systems Against Fuel Vapor Ignition Due to Lightning;* FAA Technical Center and SAE–AE4L Lightning Subcommittee, October 1984.

eventually led to the certification of practical retrofit designs for center wing fuel tank nitrogen generating systems on existing transport airplane models.[10] Those systems use nitrogen-enriched air that is generated onboard the airplane to displace oxygen in the fuel tank. This results in inerting the fuel tank throughout most of the flight and ground operations. Some applicants for new type certificates involving composite wing structure have included flammability reduction means, such as an ullage inerting system, for all fuel tanks, including the main fuel tanks located in the wing.

2. Amendment 25–125

Amendment 25–125 (73 FR 42444–42504), which was part of the fuel tank flammability reduction (FTFR) rule adopted in 2008, revised § 25.981(b) and (c) to introduce specific performance-based standards for the maximum flammability allowed in various fuel tanks. Amendment 25–125 maintained the alternative adopted by Amendment 25–102 allowing ignition mitigation means. Amendment 25–125 established a new fleet average flammability exposure limit of 3 percent for all fuel tanks, or that of an equivalent conventional unheated aluminum fuel tank. Fuel tanks that are not main fuel tanks and that have any portion located within the fuselage contour must be limited to 3 percent fleet average exposure and 3 percent warm day exposure. Amendment 25–125 did not change the ignition prevention standards of § 25.981(a), and it moved the CDCCL requirements created by Amendment 25–102 to § 25.981(d).

Introduction of airplane designs with composite fuel tanks that cannot be shown to meet the flammability requirements of § 25.981 has resulted in the need to provide active fuel tank flammability control systems in all fuel tanks. For main tanks that were only required to be equivalent to unheated aluminum wing tanks, these systems reduce fuel tank flammability well below that required by § 25.981(c). The FAA has issued special conditions for new airplane designs that allow consideration of these fuel tank flammability control systems when showing that fuel tank ignition will not result from structural ignition sources following a lightning strike.

[10] Inerting systems are approved for Boeing Models 737, 747, 757, 767, and 777 and for Airbus Models A320, A330, and A340.

D. Related Actions Following the Adoption of Amendment 25–102

Several applicants found that it was impractical to achieve dual fault tolerance for fuel tank structure lightning protection. The FAA agreed that applying § 25.981(a)(3) for fuel tank structure was impractical in certain cases. The FAA required the safety assessment associated with the fuel tank system to include the assumptions that the fuel tank was always flammable and lightning was continuously present. However, when evaluating where lightning attaches to the airplane and considering the lightning protection features, the probability of strikes that could cause an ignition source is significantly less than the required assumptions. We have defined strikes that could cause an ignition source as ''critical lightning strikes.'' Critical lightning strikes occur on the order of once every 100,000 hours of airplane operation. In addition, for airplanes with the fuel tank flammability reduction means required by § 25.981, the likelihood of a fuel tank being flammable is less than one hour for every hundred hours of operation. For airplanes without fuel tank flammability reduction means (*i.e.,* with unheated aluminum wing tanks), the flammability range is one to five hours for every one hundred hours of operation. Consideration of these factors in combination with fail-safe ignition required by § 25.981, which typically resulted in the need for triple-redundant lightning ignition prevention features, led the FAA to conclude that the required assumptions were overly conservative.

As a result, on May 26, 2009, the FAA issued a policy memorandum to standardize the process for granting exemptions and issuing special conditions for fuel tank structure lightning protection. FAA Policy Memorandum ANM–112–08–002, *Policy on Issuance of Special Conditions and Exemptions Related to Lightning Protection of Fuel Tank Structure,* defined requirements that were to be applied through special conditions or exemptions. This policy allowed the consideration of the likelihood of both the occurrence of a critical lightning strike and the tank being flammable. The policy contained detailed information that explained the design goal of § 25.981(a)(3) for fuel tank structure and provided guidance for alternatives to compliance that still achieved that design goal.

In 2009 the FAA chartered the Lightning ARC to re-examine §§ 25.954 and 25.981 at Amendments 25–102 and 25–125 for fuel tank lightning protection. The Lightning ARC included industry members that were the leading aircraft lightning protection design experts in the world, along with the leading regulatory experts working in the lightning area. To address structure-specific issues, such as the occurrence of cracks and fastener failures, the Lightning ARC established a subcommittee made up of airplane manufacturer structural experts. The ARC also commissioned a specific study of lightning current distribution at structural cracks and fasteners, including the evaluation of lightning-related sparks at these cracks and fasteners. In May 2011 the Lightning ARC issued a final report [11] that included the results of these special studies and their findings and recommendations. They proposed new rulemaking on the following topics:

1. Lightning-specific requirements that focused on ignition source prevention;
2. Inclusion of both structure and systems in the same fuel system lightning protection rule with the same requirements;
3. Single fault-tolerant designs, or if impractical, a qualitative assessment to ensure the combination of non-fault-tolerant failures resulting in an ignition source, is remote;
4. Design, manufacturing processes, and instructions for continued airworthiness (ICA) to address manufacturing variability, aging, wear, corrosion, and likely damage;
5. ICA to include caution information for critical lightning protection features to minimize accidental damage during maintenance, alteration, or repairs;
6. Inclusion of inspections and procedures required for non-fault-tolerant designs in the Airworthiness Limitations Section of the ICA;
7. Addition of a new section in the ICA specific to fuel tank lightning protection;
8. No requirement for lower flammability in the lightning regulations (*i.e.,* retain existing flammability requirements); and
9. Development of new guidance material and revision of existing guidance material to ensure a consistent approach to fuel system lightning protection.

To address these recommendations, the FAA issued a new policy statement that superseded Policy Memorandum ANM–112–08–002 as an interim

[11] FAA Large Airplane Fuel System Lightning Protection ARC, Final Report, May 2011. *http://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/LAFSLP.ARC.RR.20110518.pdf.*

approach until new rulemaking could be accomplished. Policy Statement PS–ANM–25.981–02, *Policy on Issuance of Special Conditions and Exemptions Related to Lightning Protection of Fuel Tank Structure and Systems,* issued June 24, 2014, expands the scope of the previous policy to include systems and provides guidance for special conditions and exemptions that are applicable to the design of lightning protection features in fuel tank structure and systems with respect to compliance with § 25.981(a)(3).

The proposed revisions to § 25.981(a)(3) would eliminate the need to issue special conditions and exemptions; however, the detailed information provided in that policy statement addresses the design goal of the proposed § 25.954 for fuel tank structure and systems and provides valuable information about means of compliance. Therefore, a copy of that policy statement has been added to the docket for this rule.

III. Discussion of the Proposal

A. General

In order to comply with the latent failure criterion of § 25.981(a)(3), systems with potentially catastrophic failure conditions resulting from a lightning strike typically need at least triple-redundancy in their protective features, or dual-redundancy with continuous system monitoring to reduce the latency period. Dual-redundant designs could only be shown to comply with § 25.981(a)(3) when combined with either regular inspections at very short intervals or with a monitoring device to verify the functionality of the protective features. Inspection of the various design features might be difficult or impossible if, for example, the feature is covered by airframe structure. This level of redundancy has been shown to be impractical for certain areas of airplane structure, such as airplane skins, joints, ribs, spars, stringers, and associated fasteners, brackets, and coatings.

Lightning protection features are typically an integral part of the fuel tank structure or inside the fuel tanks. Due to the frequency of inspections that would be required to sufficiently limit exposure to latent failures, it would be impractical to use inspections of lightning protection features by themselves to eliminate the requirement for triple redundancy. Therefore, the FAA proposes to amend the requirements of §§ 25.954 and 25.981(a)(3) to address these and other issues related to fuel tank lightning protection design. The FAA's intent is to establish a balanced approach to ensure that airplane designs provide an acceptable level of safety, while allowing manufacturers to develop an economically viable design, economical manufacturing methods, and effective maintenance programs considering the limitations in preventing or managing failures inside the fuel tanks. To preclude a catastrophic event, the proposed standards would require the applicant to develop structural and system component designs that are free of ignition sources. In addition, the applicant must still account for fuel vapor flammability as required in § 25.981(b). This proposal would also allow applicants to take credit for providing reduced flammability exposure below what is required by § 25.981(b).

Practicality is a balance of available means, economic viability, and proportional benefit to safety. A means to provide fault tolerance against potential ignition sources that is possible with little economic impact is practical even if the potential ignition source conditions would be remote without them. In general, applicants have found fault tolerance to be practical for systems lightning protection features. However, in several cases, applicants found that providing fault tolerance was impractical because the means had a significant economic impact on production, operational, or maintenance costs. In these cases, it is not necessary that the applicants use these means if it can be determined that the probability of a potential ignition source, combined with a critical lightning strike and flammable fuel tank conditions is such that catastrophic failure is not anticipated over the life of the fleet.

B. ''Fuel System Lightning Protection'' (§ 25.954)

The current rule specifies the primary lightning threats to the fuel system and requires designs that prevent ignition of fuel vapor within the system. The original intent was to prevent ignition of fuel vapor in the fuel tank structure and system due to lightning.

As written, the current rule does not address failures or deterioration of the lightning protection features.

In lieu of regulating fuel tank lightning protection by §§ 25.954 and 25.981, we propose to consolidate requirements for the prevention of fuel vapor ignition solely in § 25.954. We propose to retain (and renumber) the existing rule text of § 25.954, add a clarification of the existing requirements regarding lightning-induced or conducted electrical transients, and add two new performance-based requirements to regulate the risk of failures and to maintain the integrity of the lightning protection features during the airplane service life.

The addition of a clarification regarding lightning-induced or conducted electrical transients is needed to make it clear that this regulation addresses these effects. Lightning strikes to airplanes result in significant current conducted through airplane structure and equipment, and can induce voltage and current on wires, tubes, and equipment. The use of composite structure can increase these induced and conducted electrical transients. Therefore, this proposed rule would require that the design and arrangement of the fuel system prevent the ignition of fuel vapor within the system by lightning-induced and conducted electrical transients.

A new paragraph (b) would require that catastrophic ignition caused by lightning be extremely improbable, placing that risk in line with that of all other potentially catastrophic hazards. The proposed rule would require the type design to take into account the likelihood of a critical lightning strike, the fuel tank being flammable, and creation of an ignition source due to the failure of fuel system or structural lightning protection features. The purpose of the proposed rule is to ensure that a catastrophic fuel vapor ignition will not occur due to any single failure when lightning attaches to the airplane. In addition, the combination of the probabilities of a critical lightning strike, a flammable fuel tank condition, and the exposure time of all specified failures of structural features that are not fault-tolerant (and that can occur within the fuel tank) must, under the proposed rule, be such that catastrophic failure from ignition due to lightning would not be anticipated over the life of that airplane fleet. For example, for each structural discrepancy identified, the applicant would be required to demonstrate that mandated structural inspection procedures would reliably detect cracks or failed fasteners/cap-seals (where the gap size required to create arcing is exceeded) before the combined probability of the occurrence of a flammable fuel tank condition and a critical lightning strike was exceeded.

The proposed rule would also require that the type design take into account the failure of other system components that may run into and/or through the fuel tank and can be an ignition source in the event of a critical lightning strike. Lightning-related ignition of flammable fluids and vapors due to leakage outside the fuel system and the resultant

hazards will continue to be covered in § 25.863.

The proposed rule would use ''taking into account,'' rather than ''consider,'' [12] a term the FAA has previously used. We intend no substantive effect by this change.

We propose to add a new paragraph (c) that would require applicants to develop CDCCLs that identify lightning protection design features, instructions on how to protect them, and inspection and test procedures specific to lightning protection features within fuel tank structure and systems to detect and correct any anomalies or failures during the life of the airplane. Section 25.954 as written in 1967 required applicants to design lightning protection features into fuel tank structure and systems, but it does not account for the deterioration of those features during the life of the airplane. During inspections and accident investigations, we found damage and deterioration of fuel tank lightning protection features such as bonding straps, brackets, and sealants that could present gaps or other electrical discontinuities that could become ignition sources in the presence of lightning strikes.

CDCCLs are one type of fuel system airworthiness limitation that define critical features of the design that must be maintained. CDCCLs were originally required by the fuel tank explosion prevention standards of § 25.981 and appendix H to 14 CFR part 25 at Amendment 25–102. Fuel system airworthiness limitations include mandatory replacement times, inspection intervals, related inspection procedures, and CDCCLs. As explained in the FTFR final rule, Amendment 25–125, ''The intent of the CDCCL requirement is to define the critical features of the design that could be unintentionally altered in a way that could cause reduction in fuel system safety.'' CDCCLs are distinct from mandatory replacement times, inspection intervals, and inspections and other procedures.

This proposed new paragraph will require applicants to identify the lightning protection design features of the airplane, as well as to prepare instructions on how to protect those features. Identification of a feature refers to listing the feature in the CDCCL. The FAA has determined that during airplane operations, modifications, and unrelated maintenance actions, these features can be unintentionally damaged or inappropriately repaired or altered. Instructions on protection are meant to address this safety concern. An example of a common design feature to prevent catastrophic ignition caused by lightning is wire separation so that wires cannot chafe against one another. An example of an instruction on how to protect this design feature would be, ''When performing maintenance or alterations in the vicinity of these wires, ensure a minimum of 6-inch wire separation is maintained.''

Addressing the effects of aging, wear, and corrosion as both a design and continuing airworthiness consideration is necessary to ensure reliable protection over the life of the airplane. The proposed rule would require applicants to establish necessary inspection and test procedures to prevent development of lightning-related ignition sources within the fuel tank structure and systems. One example of an inspection procedure would be to examine a structural element for cracks. An example of a test procedure would be a functional test to ensure a ground fault interrupter continues to function. The FAA would require these inspection and test procedures to include airworthiness limitations for non-fault-tolerant features and caution information for lightning protection features that may be altered by maintenance and repairs. For non-fault-tolerant lightning protection features that are identified in support of certification, the rule would require applicants to develop and identify inspection and test procedures as airworthiness limitations in the instructions for continued airworthiness, approved by the FAA, in order to preclude the development of unsafe conditions.

We also propose to add a new paragraph (d) to define ''critical lightning strike'' and ''fuel system'' for the purpose of this section.

C. ''Fuel Tank Ignition Prevention'' (§ 25.981(a)(3))

Section 25.954 provides requirements for protection from ignition due to lightning, and § 25.981 provides requirements for protection against ignition from all sources, including lightning. The redundancy of the rule coverage has caused confusion regarding which regulation applies to fuel tank lightning protection.

To consolidate lightning protection requirements into one rule, § 25.954, we propose to add an exception to § 25.981(a)(3) removing lightning as an ignition source from the scope of this section and referring applicants to § 25.954 for lightning protection requirements.

Section 25.981(d) at Amendment 25–125 requires CDCCLs, inspections, or other procedures to be established to ensure fuel tank safety. The FAA intended that CDCCLs would be required to identify critical design features, and that inspections or other procedures would also be provided where it was determined necessary. However, some have misunderstood the wording to allow inspections or other procedures, for example adhering to component maintenance manuals alone, instead of maintaining the original design details of the critical feature. We are proposing to revise this rule text to clarify that CDCCLs must be provided to identify critical design features, in addition to inspections or other procedures.

Note: The title of § 25.981 would be corrected in this rulemaking from ''Fuel Tank Ignition Prevention'' to ''Fuel Tank Explosion Prevention.'' We intended this change with Amendment 25–125, but the change was not accomplished.

D. Instructions for Continued Airworthiness (Appendix H to Part 25)

1. Airworthiness Limitations Section (H25.4)

Currently, section H25.4 does not expressly mention instructions about lightning protection features. We propose to add a new paragraph H25.4(5) that will make mandatory any inspection and test procedures that are needed to sustain the integrity of the lightning protection features that are used to show compliance with § 25.954.

2. Lightning Protection Features Instructions for Continued Airworthiness (H25.X)

We propose to add a new section to appendix H to require applicants to develop instructions for continued airworthiness that are approved by the FAA, and that are specific to the lightning protection features for fuel tank structure and systems required by § 25.954.

E. Advisory Circular

The FAA would develop one new proposed AC and would propose revisions to two other ACs to be published concurrently with the proposed regulations contained in this NPRM. The proposed new AC would provide guidance material for acceptable means, but not the only means, of demonstrating compliance with proposed § 25.954. The revisions to the existing ACs would update them to reflect the revised rules.

[12] See Legal Interpretation to William Szendrey from Rebecca MacPherson (Apr. 28, 2005).

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 (Pub. L. 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, this 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. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

1. Total Benefits and Costs of This Rule

This rule is a retrospective regulatory review rulemaking under Executive Order 13563. This rule would be relieving for both government and industries with the estimated net benefits. We assess regulatory benefits based on resources saved for reducing regulatory burden on both industry and the FAA. The total combined savings would be about $610 million or $450 million present value at a 7% discount rate. The lower and the higher estimates of the total combined regulatory savings range from $384 million to $836 million (see table). The proposed rule would maintain a level of safety for fuel tank structure and system lightning protection consistent with that provided for other airplane hazards.

Benefits (1 × million dollar)	Value in 2014 dollar			Present value at 7%		
	Average	Lower bound	Upper bound	Average	Lower bound	Upper bound
Government benefits (sub-total)	$0.1	$0.1	$0.2	$0.1	$0.1	$0.1
Industries benefits (sub-total)	610	384	836	450	283	618
Exemptions and special conditions	30	17	44	21	12	30
Productions	570	361	779	423	267	579
Operations	10	6	13	6	4	9
Total Societal Benefits	610	384	836	451	283	618

2. Parties Potentially Affected by This Rulemaking

- Part 25 airplane manufacturers.
- Operators of part 25 airplanes.
- The Federal Aviation Administration.

3. Assumptions and Data Sources

- Data related to industry savings mainly come from airplane manufacturers.
- Data related to requests for exemptions and special conditions come from FAA internal data source and the agency's experts judgments.
- The FAA would process four special conditions and seven exemptions in the next ten years in the absence of this rule.
- Domestic airplane manufacturers would petition for two special conditions and three exemptions before reaching their cost-benefit steady-state.[13]
- Approximately 184 airplanes would be produced per year for ten years based on airplane models being approved for exemptions and special conditions for lightning protection.[14]
- Computational weights of composite wing airplanes would change from current approximate 15%–25% level linearly increasing to 50% level for a ten-year production cycle.[15]
- Airplanes have service life-span for 30 years.[16]
- Projected impacts on manufacturers and the government are for a ten-year period from 2015 to 2024.
- All monetary values are expressed in 2014 dollars.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that 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

[13] Ibid.

[14] ''Fleet Discovery'' 2000–2004 Penton, provided by Aviation Week Intelligence Network, data through the end of April 2014 Ibid.

[15] Ibid.

[16] Ibid 1 and 2.

not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule would amend certain airworthiness regulations that are not always practical for transport category airplanes regarding lightning protection of fuel tanks and systems. While the largest benefiters of this proposed rule would be airplane manufacturers, who are large entities, many small airline operators would also benefit from this proposed rule due to fuel savings. Therefore, as provided in section 605(b), the Administrator of the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities and also certify that a regulatory flexibility analysis is not required.

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 it could result in the same benefits or costs to domestic and international entities in accord with the Trade Agreements Act.

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 $151 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.

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 Section 312f of Order 1050.1E and involves no extraordinary circumstances.

V. Executive Order Determinations

A. 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.

B. 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), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing 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 in 14 CFR Part 25

Aircraft, Aviation safety, Life-limited parts, Reporting and record keeping requirements.

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 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

■ 2. Revise § 25.954 to read as follows:

§ 25.954 Fuel system lightning protection.

(a) The design and arrangement of a fuel system must prevent the ignition of fuel vapor within the system by—

(1) Direct lightning strikes to areas having a high probability of stroke attachment;

(2) Swept lightning strokes to areas where swept strokes are highly probable;

(3) Lightning-induced or conducted electrical transients; and

(4) Corona and streamering at fuel vent outlets.

(b) The design and arrangement of a fuel system must ensure that catastrophic fuel vapor ignition is extremely improbable, taking into account flammability, critical lightning strikes, and failures within the fuel system.

(c) To protect design features that prevent catastrophic fuel vapor ignition caused by lightning, the type design must include critical design configuration control limitations (CDCCLs) identifying those features and providing information on how to protect them. To ensure the continued effectiveness of those design features, the type design must also include inspection and test procedures, intervals between repetitive inspections and tests, and mandatory replacement times for those design features. The applicant must include the information required by this paragraph in the Airworthiness Limitations section of the instructions for continued airworthiness required by §§ 25.1529 and 25.1729.

(d) For purposes of this section, a critical lightning strike is a lightning strike that attaches to the airplane in a location that affects a failed feature or a structural failure, and the amplitude of the strike is sufficient to create an ignition source when combined with that failure. A fuel system includes any component within either the fuel tank structure or the fuel tank systems, and any other airplane structure or system components that penetrate, connect to, or are located within a fuel tank.

■ 3. Amend § 25.981 by revising the title of the section and paragraphs (a)(3) and (d) to read as follows:

§ 25.981 Fuel tank explosion prevention.

(a) * * *

* * * * *

(3) Except for ignition sources due to lightning addressed by § 25.954, demonstrating that an ignition source could not result from each single failure, from each single failure in combination with each latent failure condition not shown to be extremely remote, and from all combinations of failures not shown to be extremely improbable, taking into account the effects of manufacturing variability, aging, wear, corrosion, and likely damage.

* * * * *

(d) To protect design features that prevent catastrophic ignition sources within the fuel tank, and to prevent increasing the flammability exposure of the tanks above that permitted in paragraph (b) of this section, the type design must include critical design configuration control limitations (CDCCLs) identifying those features and providing instructions on how to protect them. To ensure the continued effectiveness of those features, and prevent degradation of the performance and reliability of any means provided according to paragraphs (a) or (c) of this section, the type design must also include necessary inspection and test procedures, intervals between repetitive inspections and tests, and mandatory replacement times for those features. The applicant must include information required by this paragraph in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by §§ 25.1529 and 25.1729. The type design must also include the placement of visible means of identifying critical features of the design in areas of the airplane where foreseeable maintenance actions, repairs, or alterations may compromise the CDCCLs (*e.g.,* color-coding of wire to identify separation limitation). The type design must identify these visible means as CDCCLs.

■ 4. In appendix H to part 25, section H25.4, add new paragraph (a)(5) and new section H25.X to read as follows:

Appendix H to Part 25—Instructions for Continued Airworthiness

H25.4 *Airworthiness Limitations section.*

(a) * * *

* * * * *

(5) Mandatory replacement times, inspection intervals, and related inspection and test procedures for each lightning protection feature approved under § 25.954.

* * * * *

H25.X *Lightning Protection Features Instructions for Continued Airworthiness.*

The applicant must prepare instructions for continued airworthiness (ICA) applicable to lightning protection features for fuel tank structure and systems as required by § 25.954 that are approved by the FAA and include sampling programs, maintenance, or inspections necessary for lightning protection features.

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC, on December 9, 2014.

Chris Carter,

Acting Deputy Director, Aircraft Certification Office.

[FR Doc. 2014–29385 Filed 12–17–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 606, and 610

[Docket No. FDA–2007–N–0363]

RIN 0910–AG18

Electronic Distribution of Prescribing Information for Human Prescription Drugs, Including Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is proposing to amend its prescription drug and biological product labeling regulations to require electronic distribution of the prescribing information intended for health care professionals, which is currently distributed in paper form on or within the package from which a prescription drug or biological product is dispensed. FDA is also proposing that prescribing information intended for health care professionals will no longer be permitted to be distributed in paper form with the package from which a prescription drug or biological product is dispensed, except as provided by this regulation. We are proposing these actions to help ensure that the most current prescribing information is publicly accessible for the safe and effective use of human prescription drugs.

DATES: Submit either electronic or written comments on the proposed rule by March 18, 2015. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by January 20, 2015 (see the ''Paperwork Reduction Act of 1995'' section of this document). See section XI for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, by any of the following methods, except that written comments on information collection issues under the Paperwork Reduction Act of 1995 must be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov* (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Docket No. FDA–2007–N–0363 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Emily Gebbia, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6217, Silver Spring, MD 20993, 240–402–0980.

SUPPLEMENTARY INFORMATION:

Table of Contents

Executive Summary
Purpose of the Regulatory Action
Summary of the Major Provisions of the Regulatory Action
Costs and Benefits
I. Background
  A. How do ''Prescription Drug Labeling'', ''Prescribing Information'', and ''Patient Labeling'' for human prescription drugs differ?
  B. Who receives paper prescribing information and who uses it?
  C. Discussion of Special Consideration of Types of Human Prescription Drug Labeling
  D. What is the history of electronic regulatory submissions?
  E. Discussion of Other Labeling Initiatives
II. Discussion
  A. What are we proposing?
  B. Why is electronic distribution of prescribing information better?
  C. Need for Up-To-Date Prescribing Information
  D. How are the application processes for changes to labeling affected?
III. Public Hearing on the Electronic Distribution of Prescribing Information
  A. Summary of Comments
  B. FDA's View on the Comments and Testimony
IV. Description of the Proposed Rule
  A. Labeling Accompanying the Product
  B. Label Statement
  C. Paper Versus Electronic
  D. Exemptions
  E. Submission of Most Current Version of Prescribing Information to FDA
  F. Conforming Amendments
V. Legal Authority
VI. Environmental Impact
VII. Paperwork Reduction Act of 1995
  A. Summary of Provisions in Proposed Rule That Contain Collections of Information
  B. Estimates of Reporting Burden
  C. Other Annualized Cost Burdens to Respondents: Operating and Maintenance Costs of the Toll-Free Telephone Number and Responding to Requests
  D. Capital Costs
VIII. Federalism
IX. Analysis of Impacts
X. Comments
XI. Proposed Effective Date
XII. Proposed Compliance Date
XIII. References

Executive Summary

Purpose of the Regulatory Action

The Food and Drug Administration (FDA) is proposing to amend its labeling regulations at 21 CFR 201.100, 201.306, 201.310, 606.121, 606.122, 610.60, and 610.61 for human prescription drugs and biological products, and blood and blood components intended for transfusion, to require that the prescribing information intended for health care professionals be distributed electronically and, with few exceptions, not in paper form. Prescribing information provides health care professionals the information necessary for the safe and effective use of the product. It is updated periodically to include the most current information, such as newly acquired safety information. Currently, the prescribing information is distributed in paper form on or within the package from which a prescription drug is dispensed. The paper form of the prescribing information may not contain the most current information because it may have been printed and distributed prior to more recent labeling changes, while the electronic form of prescribing information can be updated in real-time. FDA is taking this action to ensure that the most current prescribing information for prescription drugs will be available and readily accessible to health care professionals at the time of clinical decisionmaking and dispensing.

The electronic distribution requirements of this proposed rule would not apply to patient labeling

(including patient package inserts and Medication Guides), or to prescribing information accompanying promotional labeling, which would continue to be provided in paper form.

FDA is authorized under various sections of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to require that prescribing information be distributed electronically and to require that paper copies of the prescribing information no longer be distributed, except as provided in this regulation, to ensure that human prescription drugs have adequate directions for use and to ensure the efficient enforcement of the FD&C Act. These sections include sections 201(n), 502, 503, 505, and 701(a) of the FD&C Act (21 U.S.C. 321(n), 352, 353, 355, and 371(a)), and section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). The electronic distribution of prescribing information for human prescription drugs would permit the efficient enforcement of the misbranding provisions in sections 502(a) and (f) of the FD&C Act, as well as the safety and effectiveness provisions of section 505 of the FD&C Act.

Summary of the Major Provisions of the Regulatory Action

The proposed rule would amend the labeling regulations to require manufacturers to distribute the prescribing information electronically, instead of in paper form. Manufacturers would be required to submit the prescribing information to FDA for posting on FDA's publicly available labeling repository Web site (*labels.fda.gov*) every time there is a change in the labeling. Manufacturers would also be required to review the labeling posted at FDA's Web site to verify that the correct version of the labeling appears in the repository, and to promptly notify FDA if the correct version is not posted. This would ensure that the most up-to-date version of the prescribing information is available to health care professionals and the public.

The proposed rule would require a product's immediate container label and outside package to bear a statement directing health care professionals to FDA's labeling repository to view the electronic version of prescribing information. The statement would also provide a toll-free telephone number, maintained by the manufacturer, to receive requests for the manufacturer to send an emailed, faxed or mailed paper copy of the prescribing information. The manufacturer would be required to ensure the toll-free number service was available 24 hours a day, 7 days a week. This would ensure that the prescribing information is accessible in most situations when Internet access is not available to the health care professional.

In addition, the proposed rule would provide that FDA may grant an exemption from the electronic distribution of labeling requirements when compliance could adversely affect the safety, effectiveness, purity, or potency of the drug, is not technologically feasible, or is otherwise inappropriate. Manufacturers of exempted products would distribute prescribing information in paper form on or within the package from which the product is dispensed. Examples of circumstances where it may be appropriate to exempt a product include a product intended for use in an emergency room or a product that may be stockpiled for an emergency.

Costs and Benefits

The proposed rule impacts the drug and biological products industries that supply prescribing information, as well as the prescribers, pharmacists and other health care professionals who are the intended users of the information. After initial set-up costs, industry will experience net savings by providing the prescription information electronically. Pharmacies will incur net costs due to initial capital costs to access the information, increased search time when accessing the information and the printing cost when a request is received for the prescribing information in printed form. We estimate no cost increases to most health care professionals to access the information.

At a 7 percent discount rate over a 10-year period, the annualized cost savings range from $52 million to $164 million and are predominantly savings to industry; the annualized costs range from $47 million to $89 million and are mainly incurred by pharmacies; and the annualized net savings range from $5 million to $74 million. The public health benefits of users having access to the most up-to-date version of the prescribing information have not been quantified.

SUMMARY OF ANNUALIZED COSTS AND COST SAVINGS OF THE PROPOSED RULE

[$ millions]

	7% discount rate, 10 years		3% discount rate, 10 years	
	Low	High	Low	High
Cost Savings	$51.8	$163.7	$56.6	$170.8
Costs	46.8	89.2	46.6	88.6
Net savings	5.0	73.5	10.0	82.2

I. Background

We are proposing to amend the labeling regulations to require electronic distribution of prescribing information for human prescription drugs.[1] This is intended to facilitate the distribution of updated prescribing information as new information becomes available and as changes in prescribing information are made. FDA is taking this action so that the most current prescribing information for distributed prescription drugs will be available and readily accessible to health care professionals at the time of clinical decisionmaking and dispensing.

This proposed rule complements other FDA and Department of Health and Human Services initiatives that are intended to provide accessible electronic drug product information to health care professionals, consumers, and/or the public. These initiatives include the electronic prescribing provisions of the Medicare Prescription Drug Improvement and Modernization Act (Pub. L. 108–173), the requirement for bar codes on certain drug product labels, the requirement for submission of electronic labeling in product approval applications, and electronic registration of drug establishments and

[1] When used in this proposed rule, the term ''drug'' includes biological products *e.g.* allergenic products, vaccines, blood and blood components intended for transfusion, plasma derivatives, gene therapies, and human cells, tissues, and cellular- and tissue-based products licensed under section 351 of the PHS Act.

listing of drug products. Additionally, the Agency has been involved in an initiative known as ''DailyMed''. ''DailyMed'' is a publicly-available, computerized repository of a broad array of drug information, which is maintained by the National Library of Medicine.

A. How do ''Prescription Drug Labeling'', ''Prescribing Information'', and ''Patient Labeling'' for human prescription drugs differ?

''Prescription drug labeling,'' as relevant to this proposed rule, includes prescribing information; patient labeling; the product's immediate container label; outer container; the outside package; and other written, printed, or graphic information that accompanies the product. Prescription drug labeling meets the definition of ''labeling'' in section 201(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(m)) and must comply with all applicable provisions of section 502 of the FD&C Act (21 U.S.C. 352). In addition, in order to be exempt from the statutory requirement of section 502(f)(1) of the FD&C Act, prescription drug labeling must also satisfy the requirement of § 201.100(d) (21 CFR 201.100(d)) which states that any labeling, as defined in section 201(m) of the FD&C Act, whether or not it is on or within a package from which the drug is to be dispensed, distributed on or behalf of the manufacturer, packer, or distributor of the drug, that furnishes or purports to furnish information for use or which prescribes, recommends, or suggests a dosage for the use of the drug contains adequate information for such use, as further described in that provision. In this document, the terms ''prescription drug labeling'', ''product labeling'', and ''labeling'' will be used interchangeably as broader terms to encompass prescribing information and other information considered to be components of labeling. All components of labeling are submitted to FDA as part of an applicant's new drug application (NDA), abbreviated new drug application (ANDA), biologics license application (BLA), supplement, annual report, or in other submissions, such as establishment registration and drug listing.

''Prescribing information'', commonly referred to as ''professional labeling'', ''content of labeling'', ''package insert'', ''physician labeling'', ''direction circular'', ''circular of information'', or ''package circular'', is a component of prescription drug labeling and is periodically updated to include the most current information about the product. For products approved by FDA, approval of the prescribing information is based on the Agency's thorough analysis of the marketing application, including the proposed label, submitted by the applicant. Prescribing information contains the information necessary for safe and effective use of the product, and is intended for use by the health care professional. Prescribing information is subject to the format and content requirements of §§ 201.56, 201.57, 201.80, 606.122, or 610.61 (21 CFR 201.56, 201.57, 201.80, 606.122, or 610.61). Prescribing information is currently distributed in paper form with the product to meet the condition stating that labeling on or within the package from which a prescription drug is to be dispensed bears adequate information for its use (§ 201.100(c)(1)). This proposed rule applies to prescribing information that is currently distributed in paper form on or within the package from which the prescription drug is to be dispensed. In addition, prescribing information must also accompany ''promotional'' labeling, as described in § 202.1(l)(2) (21 CFR 202.1(l)(2)).[2] This proposed rule will not apply to prescribing information that accompanies promotional labeling, which will continue to be distributed in paper form. Therefore, we propose new § 201.100(d)(4) to make clear that prescribing information accompanying promotional labeling must be distributed in paper form.

''Patient labeling'', another component of labeling for some prescription drugs, is FDA-approved information that is intended for patient use and includes patient package inserts and Medication Guides. Patient labeling must be reprinted in the prescribing information or must accompany the prescribing information (§§ 201.57(c)(18) and 201.80(f)(2)). Because FDA is examining methods to improve the content and distribution of patient labeling in a different initiative, patient labeling is not affected by this proposed rule and will continue to be provided in paper form, as required by applicable regulations, and to be electronically submitted to FDA with the prescribing information. Therefore, for those products including patient labeling, patients will continue to receive warnings, risk information, and special instructions for use in paper form as patient labeling.

Prescription drug labeling also includes the product's immediate container label and the outside package. It is noted that labeling regulations of biological products distinguish between a ''container label'' and ''package label'' (§§ 610.60 and 610.61 (21 CFR 610.60 and 610.61)). For purposes of this document, any reference to the ''outside package'' applies to the ''package label'' for biological products or the outer carton, outer container, or outer package of the prescription drug. Based on the FD&C Act definitions of the terms ''label'' and ''labeling'', any outer container, carton, or package is ''labeling''.

B. Who receives paper prescribing information and who uses it?

The prescribing information that is the subject of this proposed rule is the paper version that is on or within the package from which the drug is to be dispensed (*e.g.,* physically attached to the bottle containing the drug, inside the carton or box containing the drug, with the bulk pharmacy package). Usually, it is printed on thin paper in small size font, and is folded multiple times so that it can be contained within the drug carton or can be otherwise attached to drug packaging. Drug products, with the paper prescribing information on or within their packaging, are distributed to pharmacies for dispensing.

This paper prescribing information is intended for use by all health care professionals. However, health care professionals have come to rely on electronic or other paper versions (*e.g.,* compendia such as the Physicians' Desk Reference (PDR)) compiled by third parties instead of this paper version. Prescribing physicians and many health care professionals (*e.g.,* nurses) typically do not receive this paper version because they do not dispense drugs. Pharmacists do receive it along with the drug product from the manufacturer or distributer, but it is often difficult to read due to the small font size, thin paper, and multiple folds, and we have heard anecdotally that it is often discarded. In addition, pharmacies usually have some form of compendia purchased from a third party, and many

[2] Such labeling is described in § 202.1(l)(2) and includes, for example, printed, audio, or visual matter containing drug information supplied by and disseminated by or on behalf of the manufacturer, packer, or distributer. Examples include but are not limited to: Brochures, booklets, mailing pieces, calendars, price lists, catalogs, letters, motion picture films, sound recordings, exhibits, or literature. Such promotional material is labeling as defined in section 201(m) of the FD&C Act, and therefore, must comply with § 201.100(d) which states that any labeling, as defined in section 201(m) of the FD&C Act, whether or not it is on or within a package from which the drug is to be dispensed, distributed by or on behalf of the manufacturer, packer, or distributor, that furnishes or purports to furnish information for use or which prescribes, recommends, or suggests a dosage for the use of the drug contains adequate information for such use.

hospitals and chain pharmacies rely on electronic compendia. Patients ordinarily do not receive the paper prescribing information because the pharmacist dispenses the drug to a patient in a different container than the packaging from the manufacturer, but they do receive other information intended for patients from the pharmacy (see section I.A).

C. Discussion of Special Consideration of Types of Human Prescription Drug Labeling

1. Instructions for Use for the Pharmacist

Instructions for use for the pharmacist are considered part of human prescription drug labeling, specifically part of the prescribing information. For the purposes of this proposed rule, instructions for use for the pharmacist include any instructions for administering, assembling, reconstituting, mixing, diluting, or other preparation that is done prior to dispensing the drug product to the patient. These preparation steps for the pharmacist are contained in the ''Dosage and Administration'' section of the prescribing information (§§ 201.57(c)(3) and 201.80(j)), which currently accompanies the product in paper form. If the information is adequately concise, it may also be printed on the product's immediate container label or on the outside package. To the extent that this information is available on the immediate container label or outside package, it does not fall within the scope of this proposed rule. However, usually the product's immediate container label is too small to contain the preparation instructions, so the immediate container label or the outside package typically bears a statement referring to the prescribing information for the detailed instructions. Therefore, where the container label refers to the prescribing information for preparation instructions, this proposed rule would require that these instructions for use for the pharmacist be available electronically, rather than in paper form. This proposed rule provides a mechanism, if needed, to request the prescribing information in paper form. FDA welcomes comments on whether, in circumstances where the instructions for use for the pharmacist are not sufficiently concise to be printed on the immediate container label or outside package, the electronic version of the prescribing information is adequate.

2. Prescribing Information (Circular of Information) for Blood and Blood Components Intended for Transfusion

In addition to § 201.100, blood and blood components intended for transfusion are also subject to labeling requirements under §§ 606.121 and 606.122, including the requirement that the circular of information be available for distribution, and to registration and listing requirements under 21 CFR part 607. This rule, if finalized, would require that the prescribing information (*i.e.,* the circular of information) for blood and blood components intended for transfusion be provided electronically, rather than in paper form. This rule would also provide the mechanism for a request to be made for prescribing information in paper form. In contrast to biological products that register and list under part 207 (21 CFR part 207), however, labeling and registration and listing information for blood and blood components are currently not electronically submitted to the Agency. FDA is in the process of developing standards for the electronic submission of labeling for these products, and these standards will eventually accommodate blood and blood components. The Agency will consider progress in developing such standards when setting a compliance date for blood and blood components and/or on our own initiative granting an exemption for blood and blood components for a period of time until electronic submission of the labeling for blood and blood components is supported. Thus, the final regulation may include staggered compliance dates, with a later compliance date for blood and blood components and an earlier compliance date for all other drug products. We also invite public comment on whether blood and blood components intended for transfusion should be subject to the electronic distribution of prescribing information requirements in this proposed rule once the electronic submission standards accommodate these products.

3. Access to Prescribing Information When Internet Access Is Unavailable

FDA recognizes that there may be situations that present challenges for accessing electronic prescribing information of prescription drugs. Some of these situations were identified in the July 2013 Government Accountability Office Report ''Electronic Drug Labeling: No Consensus on the Advantages and Disadvantages of Its Exclusive Use'' (GAO Report) (Ref. 1).

During a public health emergency, natural disaster, or other situation involving field response, there may be power outages or technology service interruptions that render electronic prescribing information unavailable to health care professionals. Responders generally enter an emergency situation with all the medical supplies and materials necessary to address the emergency situation. Therefore, we do not anticipate that they would rely on the Internet being available to be able to provide medical care. For example, deployment units often have electronic medical resources that can be used with wireless mobile devices. If wireless service is not available, units are also equipped with back-up sources of drug information (*e.g.,* compendia downloaded onto laptops or tablets, paper compendia, and other targeted information to address the public health emergency). Responders also train extensively for emergency situations and are very familiar with the specific drugs they are dispensing, reducing the risks associated with not having access to the electronic prescribing information. Thus, reference to the full content of labeling would rarely be necessary in such an emergency. When it comes to natural disasters that affect pharmacies, they often have contingency plans in place for how services will be provided (*e.g.,* during events such as power disruptions). For example, some pharmacies may rely on back-up generators or refer patients to another nearby pharmacy (Ref. 1). We invite comment from public health authorities and the medical care community on how product labeling is currently handled and whether current practices are sufficient when Internet access is not available due to disasters or public health emergencies. We also invite comment on what impact, if any, this proposed rule will have during a public health emergency, natural disaster, or other situation involving field response when Internet or wireless access is not available or reliable.

We also recognize that, during the course of a declared emergency, FDA may issue an emergency use authorization for an unapproved use of an FDA-approved drug (21 U.S.C. 360bbb–3). In such a situation, it may be appropriate to direct health care providers to materials about the Emergency Use Authorization as the primary source of information about product use for and during the emergency, in addition to FDA-approved labeling available in the labeling repository or in paper form, as appropriate. We invite comment on whether the proposed exemptions provision provides emergency planners

with sufficient flexibility regarding the labeling of their stockpiled products.

We also are concerned that there may be health care providers that are routinely unable to access electronic prescribing information due to a lack of Internet access, either because of resource constraints or geographic location, *e.g.,* in rural areas with limited Internet access. As described in detail in section IV.B, we are proposing that such health care providers would be able to access current prescribing information through mail, fax, or email, by calling a toll-free number that would be required to be included on the immediate container label and outer container of human prescription drugs. In section IV.B, we invite comment on whether requesting the prescribing information over the telephone is a sufficient method for obtaining it when it cannot be accessed using the Internet. We also invite comment on alternative or additional methods for ensuring that health care professionals without regular Internet access have the most current prescribing information, including comment on other systems described in section II.C.

Finally, we note that drugs may be exported from the United States for humanitarian use in other countries. We expect that labeling for such products will often be in the language of the country to which it is being exported and include units of measurement used in or designated by the country to which the drug would be exported. Further, in some instances, the country to which a drug is being exported may have different or additional labeling requirements or conditions for use (compared to those on the FDA-approved labeling), and the foreign country may require the drug to be labeled in accordance with those requirements or uses. For these reasons, we expect that drugs intended for export generally will be labeled in accordance with the foreign requirements and conditions for use, as long as the conditions in the relevant provisions of the FD&C Act, or if applicable, section 351(h) of the PHS Act, are met. Nevertheless, we request comment on any impact that our current proposal to require the electronic distribution of labeling may have on drugs exported for humanitarian use and whether any modifications to the proposal should be made to address such products.

D. What is the history of electronic regulatory submissions?

On December 11, 2003, we amended the regulations governing the format in which certain labeling is required to be submitted for review with NDAs, ANDAs, certain BLAs, supplements, and annual reports (68 FR 69009). The final rule required the electronic submission of certain prescribing information in a form that FDA can process, review, and archive. This action was taken to simplify the labeling review process and to provide more timely approval of labeling changes. To support this requirement, we issued guidance in April 2005 entitled ''Providing Regulatory Submissions in Electronic Format—Content of Labeling'' (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm072331.pdf*). This guidance describes the Structured Product Labeling (SPL) standard, which is based on extensible markup language (XML), as the most up-to-date electronic format that FDA can use to process, review, and archive prescribing information, and other labeling changes that are submitted electronically as part of a regulatory submission.

In 2007, Congress enacted the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) (FDAAA). Section 224 of FDAAA, which amends section 510(p) of the FD&C Act (21 U.S.C. 360(p)), expressly requires owners and operators of establishments engaged in the manufacture of drugs (manufacturers [3]) to submit drug establishment registration and drug listing information electronically unless an exemption is granted. As part of the drug listing information, each manufacturer must submit a copy of all components of each drug's current labeling to the Agency with the exception of promotional labeling (§ 207.25(b)). To assist manufacturers with electronic submissions of drug establishment registration and drug listing information, FDA issued a guidance on May 28, 2009, entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing'' (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm072339.pdf*). This guidance provides recommendations to manufacturers on how to create and submit separate electronic SPL files containing drug establishment registration and drug listing information, including a copy of the required components of labeling, for each marketed prescription human drug, including biological products covered by part 207. The FD&C Act currently requires manufacturers to update the drug listing information (which includes the product labeling) at least twice a year, in June and December, if there have been changes to the listing elements in the prior 6 months (21 U.S.C. 360(j)(2)).

This proposed rule will complement FDA's other electronic initiatives and is intended to improve access to up-to-date prescribing information for health care professionals, thereby enhancing the safe and effective use of prescription drugs.

E. Discussion of Other Labeling Initiatives

The final rule entitled ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' (71 FR 3922; January 24, 2006) became effective on June 30, 2006 (the 2006 rule) (21 CFR parts 201, 314, and 601). The purposes of this final rule were to improve the management of the risks of medical product use and reduce medical errors by health care professionals, as well as enable health care professionals to better communicate risk information to their patients. The new content and format requirements make it easier for health care professionals to access, read, and use prescribing information, thereby increasing the extent to which they rely on it to obtain information on prescribing, dispensing, and administering prescription drugs. In announcing the final rule, FDA explained that these new requirements should enhance the safe and effective use of prescription human drugs and in turn reduce the number of adverse reactions resulting from medication errors due to misunderstood or incorrectly applied drug information.

The 2006 rule only applies to applications or efficacy supplements approved since June 30, 2001; those pending on June 30, 2006; and to new applications and efficacy supplements submitted after June 30, 2006. There are older drug products that are not subject to the new labeling content and format requirements and that have a different format of labeling and may have different headings in the labeling. As proposed, this rule does not require the electronic versions of the labeling of these older drug products to comply with the content and format requirements of the 2006 rule. FDA invites comment on whether the existence of the two different formats of electronic labeling would present barriers to their value when used in the health care setting.

[3] For the purposes of this proposed rule, the term ''manufacturer'' will be used to refer to manufacturers, repackers, relabelers, and private label distributors, unless otherwise stated. (See § 207.3(a)(8)).

II. Discussion

A. What are we proposing?

This proposed rule would require electronic distribution of prescribing information for human prescription drugs and biological products that meet the definition of a drug (see footnote 1) instead of the paper form. Electronic distribution would ensure that the most current prescribing information is available so that health care professionals can readily access the information and be better informed at the time of clinical decisionmaking and dispensing. This proposed rule would apply to manufacturers, applicants, and persons who market prescription drugs that they regard as not subject to section 505 of the FD&C Act (21 U.S.C. 355). Again, for ease of reference, in the preamble of this regulation, we will use the phrase ''manufacturer or applicant'' to refer to manufacturers, applicants (including holders of NDAs, ANDAs, and BLAs), and persons who market unapproved drugs. The proposed rule would require manufacturers and applicants to distribute electronically prescribing information by submitting the labeling in an electronic format that FDA can process, review, and archive (currently SPL format) to FDA each time the labeling content is changed. The submitted labeling would be distributed via FDA's labeling repository Web site (*labels.fda.gov*), which is a publicly available Web site. By proposing to make the most current prescribing information available at a single, comprehensive Web site, the rule would address a concern raised by stakeholders and identified in the GAO Report regarding the limitations of the multiple Web sites that currently provide electronic labeling and the importance of having a single data source that is reliable, authoritative, and comprehensive (Ref. 1). The proposed rule also would require the immediate container label and outer container of human prescription drugs to bear a statement explaining that the most current prescribing information is available at FDA's labeling repository Web site (*labels.fda.gov*) and to provide a toll-free telephone number that health care professionals may use to request that the manufacturer or applicant send current prescribing information through alternative means, such as FAX, email, or mail (*e.g.,* U.S. Postal Service or other delivery service). In cases where the immediate container label does not have adequate space for the statement, the statement would be required to be affixed to the immediate container by other means such as a peel-back label. As described in further detail in section IV.B, the only products that would not be required to bear the statement on both the immediate container and the outside package are biological products that are capable of bearing only a partial label or are incapable of bearing a container label.

Given the time necessary for industry to make preparations needed to comply with this regulation, FDA is proposing an effective date of 6 months after the publication date of the final rule in the **Federal Register** and a compliance date of 2 years after the date of publication of the final rule (see sections XI and XII for the compliance dates and implementation plans for this rule). FDA is requesting comments on the proposed effective and compliance dates, and whether they allow sufficient time for industry to implement this rule and, if not, how much additional time would be needed for implementation.

B. Why is electronic distribution of prescribing information better?

FDA has determined that requiring electronic distribution of prescribing information and eliminating the paper form that is contained on or within the package from which the drug is to be dispensed is important to ensure health care professionals have access to the most up-to-date information about the safe and effective use of the drug. To meet the requirement that states that labeling on or within the package from which the drug is to be dispensed bears adequate information for its use (§ 201.100(c)(1)), currently, prescribing information that accompanies human prescription drugs is provided in paper form. The paper form of the prescribing information is either attached to the immediate container or it may accompany the product if the product has an outer container or package. It is possible that the paper form of the prescribing information accompanying a product in interstate commerce or in the possession of a pharmacist or other health care professional may not contain the most current information because, as described in II.B.1, the paper form accompanying the product may have been printed and distributed prior to more recent labeling changes.

1. Time for Updated Paper Form of Prescribing Information To Reach Marketplace

Paper prescribing information may be outdated by the time the drug product reaches pharmacy shelves. The manufacturer or applicant of a prescription drug may take months to incorporate a labeling change for the product and print new paper forms of the updated prescribing information. This process includes printing, folding, storing until used, and attaching the prescribing information to the immediate container or placing the prescribing information within the outer package that may house the product. Each of these steps typically requires equipment made specifically for these functions. For some products, manufacturers or applicants may only produce updated printed prescribing information once a year. In cases such as this, the information in the paper form of the prescribing information may be outdated if the product is not manufactured frequently and there have been new labeling changes since manufacturing. Because of these factors, products with prior versions of the prescribing information in paper form may remain in use. FDA contracted with the consulting firm Eastern Research Group, Inc. (ERG) to investigate, among other things, how industry currently implements safety labeling changes and the associated timelines for making changes. ERG issued a report entitled ''Analysis of the Feasibility of Safety Labeling Changes Implementation Timelines'' that describes that it may be months, if not years, before updated prescribing information is available with finished drug product. It was estimated that, for printed prescribing information attached to a drug product, a change will generally reach the market anywhere from as little as 3 months to more than 39 months after the change is made (Ref. 2).

Such delays in updating the paper prescribing information raise concerns about health care professionals using outdated information for clinical decisionmaking. While not all changes may be related to significant safety or effectiveness concerns, some changes to the prescribing information are critically important for the safe use of the drug (*e.g.,* a new contraindication or warning). Because drugs that are already in distribution are not generally recalled to update the prescribing information, this new risk information would not appear in the paper prescribing information, while it could be promptly incorporated in an electronic version.

2. Time for Updated Electronic Prescribing Information To Reach the Marketplace

Unlike the paper form, electronic prescribing information can be updated in real-time with newly acquired safety or effectiveness information, and would be available for use by prescribers and other health care professionals within days of an update. Currently, electronic forms of the prescribing information for many, but not all, human prescription

drugs, are available through various sources to health care professionals and consumers in a variety of formats. This information, though, may not be the most up-to-date version of the prescribing information. The proposed rule would require that applicants and manufacturers distribute the drug's most current labeling electronically by submitting the prescribing information to FDA in a format that FDA can process, review, and archive each time the content is changed. These submissions will populate FDA's publicly available labeling repository so that the updated prescribing information is distributed in a timely fashion to prescribers, pharmacists, and health care providers. This proposed rule would require the manufacturer or applicant to verify that its prescribing information appears on FDA's labeling repository Web site and is accurate, complete, and up-to-date, and to notify FDA if the labeling is not promptly posted or if the labeling on FDA's labeling repository Web site is not accurate, complete, and up-to-date. Since FDA's labeling repository Web site will link prescribing information to specific National Drug Code (NDC) numbers, the prescribing information will be product-specific and will correspond to the NDC that may appear on a product's label. The Agency expects that the repository will also be searchable by, among other things, active ingredient and proprietary name. In this way, FDA will be able to provide the public with a complete source for the most current prescribing information for products approved under NDAs, ANDAs, and BLAs, and those marketed and not approved.

C. Need for Up-To-Date Prescribing Information

Based on the availability of a complete source for up-to-date electronic prescribing information upon implementation of this regulation, coupled with much higher use of electronic systems in health care, FDA concludes that the time is right to transition to electronic distribution of prescribing information from the static, potentially outdated paper version on pharmacy shelves. A recent survey of 436 pharmacists was conducted to assess pharmacists' readiness to adopt ''paperless labeling'' (*i.e.,* electronic prescribing information) (Ref. 3). Among this sample of pharmacists from chain pharmacies, independent retail pharmacies, hospitals, and other rural or urban dispensing sites, approximately 79 percent of respondents believed that paperless labeling would improve the adequacy of drug information available in their worksite and most pharmacists believed that patient safety would improve as a result because updated information about a drug would be readily accessible. Most pharmacists also reported that communication with patients would improve as a result of a paperless system as 81 percent of pharmacists reported using prescribing information when educating or counseling patients and verifying dose information. Pharmacists participating in the survey, in all settings except chain pharmacies, reported relying on manufacturer Web sites for online prescribing information. Pharmacists of chain pharmacies reported using corporately curated prescribing information. Of all pharmacists surveyed, only 6 percent reported using exclusively paper resources to retrieve prescribing information and only 4 percent did not have Internet access.

In addition, as described in this document, at present there are delays between when the labeling change occurs and when a product with the updated paper copy of the prescribing information actually reaches the pharmacy or point of care. During our public meeting in 2007 (see 72 FR 15701; April 2, 2007), described in section III, we heard that this is a concern of many health care professionals and consumers. Health care professionals and representative organizations believed that having the most up-to-date prescribing information would allow them to make better informed clinical decisions for their patients and would benefit the public health overall.

FDA tracks safety labeling changes and classifies them by type, depending on the risk described and the section of the prescribing information that is changed. Based on 11 years of data (2003 to 2013), we determined that there are approximately 500 safety labeling changes made each year (Ref. 4). Postapproval, safety-related labeling changes to the prescribing information that may impact public health include adding or strengthening a contraindication, warning, precaution, or adverse reaction, or the addition of, or changes to, a boxed warning for the product. In general, when important new safety information has been acquired, a new boxed warning may be added to the prescribing information to alert prescribers about the new serious risk. Our regulations also require that the boxed warning information be explained in more detail in the ''Contraindications'' or ''Warnings and Precautions'' sections of the labeling (§ 201.57(c)(1)). Therefore, addition of a new boxed warning or changes to the boxed warning generally will also affect more than one section of the prescribing information.

We conducted an internal review of labeling changes for new molecular entities, a small subset of all marketed prescription drugs, for the calendar years of 2005 to 2007, and found 36 new boxed warnings were added to the prescribing information during this 3 year period (Ref. 5). It should be noted that approximately two-thirds of these boxed warnings were the result of class-related safety labeling changes that added new boxed warnings to several different products in specific drug classes, including antidepressants, nonsteroidal anti-inflammatory drugs, and atypical antipsychotics.

In addition to boxed warnings, there are many other safety-related changes to other sections of the labeling that will add new information that is important for patient care. For example, changes to the ''Contraindications'' section can affect prescribing decisions and the patient population eligible for the drug, while changes to the ''Warnings and Precautions'' section and ''Adverse Reactions'' section can affect patient monitoring or management. We conducted an internal review of changes made to the boxed warning and ''Contraindications'' sections between the years 2003 to 2013 and found that there are about 50 additions or changes to boxed warnings each year and about 60 changes to the ''Contraindications'' section (Ref. 4). For example, in 2013, the prescribing information for codeine products (including all generic products containing codeine) was revised to include a new boxed warning and an addition to the ''Contraindications'' section to inform prescribers of the risk of respiratory depression and death in children who underwent tonsillectomy and/or adenoidectomy related to ultra-rapid metabolism of codeine to morphine. That same year, FDA issued a safety announcement regarding the use of valproate drug products for pregnant women taking the drug for migraine prevention and the prescribing information was updated to add new information to the boxed warning to inform prescribers that use of the drug while pregnant can cause major congenital malformations, particularly neural tube defects such as spina bifida, and decreased IQ scores in children. The serious nature of these warnings highlight the need for health care professionals to have access to, and utilize, the most current prescribing information from a reliable and consistent source.

FDA has tentatively concluded that health care professionals should have

access to, and rely on the most updated prescribing information when making prescribing or other clinical decisions about the safe and effective use of a drug. For this reason, FDA considered a mandatory dual system for distribution of prescribing information (*i.e.,* one in which both paper and electronic versions would be distributed simultaneously). Under such a system, the paper version of the prescribing information could include a statement that would notify the health care professional that the paper version may not contain the most up-to-date information and would direct the health care professional to the electronic version. FDA is concerned that, even with this statement, the potentially outdated paper version may be used to make a decision impacting patient care. If the paper prescribing information remains available, a busy health care professional may not look to the labeling repository to ensure he or she is reading the current paper version of the prescribing information or to ascertain what section of the prescribing information has been updated since the paper version was printed. A health care provider who does not have Internet access may continue to rely on an outdated paper version of the prescribing information, rather than contacting the manufacturer for the most updated version.

FDA also considered a dual system that requires the electronic version of the prescribing information and permits voluntary distribution of the paper version. In addition, to the concerns we describe previously with a mandatory dual system, FDA is concerned that a voluntary dual labeling system could cause confusion and workflow disruptions for health care professionals where it would be left to each manufacturer's discretion to decide whether its products will be distributed with the paper version of the prescribing information.

One additional system that FDA is soliciting comment on is a system that requires manufacturers to distribute the prescribing information electronically, as described in this proposed rule. Where paper prescribing information is needed, dispensers (*e.g.,* pharmacies) would have the option of ordering single or multiple copies of the paper prescribing information when ordering a shipment of drug from the distributor. The distributor, or other entity that delivers the drug to a dispenser, would be required to provide the paper prescribing information in the quantity ordered along with the shipment of the drug to the dispenser. The manufacturer would be required to provide sufficient numbers, or a means to produce sufficient numbers, of the paper prescribing information to the distributor. With this option, for the reasons described previously, FDA does not anticipate that dispensers would routinely order paper prescribing information because they would rely on the electronic version of the prescribing information and because pharmacies usually have some other form of compendia purchased from a third party. Nevertheless, this option would permit dispensers to receive paper prescribing information with drug shipments, as needed.

We seek comment on the dual systems described previously. Specifically, we request comment on whether and how dual systems could achieve the goal of ensuring that health care providers have the most current prescribing information. We also request comment on the structure of a dual system (*e.g.,* if such a system should require both a paper and electronic version be distributed, or require the electronic version while allowing the paper version to be distributed voluntarily or ordered by dispensers), what kind of statement the paper prescribing information should contain to advise health care providers about the electronic version, and if there are concerns or benefits not identified by FDA with such an approach. With respect to the system that would provide the dispenser the option of ordering paper prescribing information, we request comment on any challenges, including administrative challenges, to manufacturers, distributors, or dispensers related to an ordering and fulfillment process for paper prescribing information. Finally, we note that a system in which paper copies could be ordered from the distributor could address concerns discussed in section I.C.3 about health care providers that do not have reliable regular Internet access and we invite comment on this aspect of a system.

The GAO Report noted that a potential disadvantage of the exclusive use of electronic prescribing information is that it could disrupt pharmacists' workflow by requiring different steps for pharmacists to use to consult prescribing information and also preventing them from retrieving the prescribing information from the box when the pharmacist felt it was necessary to show it to the patient during a consultation (Ref. 1). The GAO Report said that these workflow disruptions could reduce the time available for patient consultations and noted that interruptions to pharmacists' workflow have been shown to increase the risk of errors made when dispensing a drug. We are aware that transitioning from a paper to electronic delivery system for prescribing information may be a change in practice that may require adjustments. In addition, if a pharmacist determines that accessing electronic prescribing information would be too disruptive, the pharmacist might instead rely on memory or outdated prescribing information available to the pharmacist in paper format, *e.g.,* in a paper-based compendia. We note, however, that in the recent survey of pharmacists discussed previously, most reported that a paperless system would improve patient safety and communication with patients (Ref. 3). Further, some of the workflow disruptions that a paperless system might cause could be offset by the advantages of having electronic prescribing information. For example, as noted in the GAO Report, in comments, and in public testimony received by FDA, electronic prescribing information is more user-friendly than the current paper package inserts: Pharmacists can quickly identify the information they are seeking by using hyperlinks and can adjust the font size to make it easy it read. We request comment on the potential workflow disruptions associated with a switch to an online-only system, and any related risks to the public health. We also request comment on whether the effective and compliance dates described in sections XI and XII of this proposed rule should be modified to allow for more time to adapt to workflow changes and to mitigate any potential risks caused by changes in workflow resulting from the proposed rule.

D. How are the application processes for changes to labeling affected?

This proposed rule would not affect the applicant's responsibilities regarding the content of labeling or the process for submitting labeling changes to FDA for approval. The prescribing information component of labeling would contain the most current changes approved by FDA, changes being effected pending FDA approval, and editorial changes that may be submitted in the annual report. Any postapproval labeling changes to an application (NDA, ANDA, or BLA) must comply with §§ 314.70, 314.97, or 601.12, as applicable, and under those requirements FDA would continue to be notified about supplements and other changes to approved applications (§§ 314.70(a) and 601.12(a)). Depending on the type of change, the changes would continue to be submitted as a supplement for prior approval (''prior approval supplements'') before

distribution, as a Changes Being Effected (CBE) supplement, or by inclusion of the information in the annual report (§§ 314.70(b), (c), and (d); 314.81(b)(2); 601.12(b), (c), and (d)). (See, also section IV.E. ''Submission of Most Current Version of Prescribing Information to FDA'' for more information.)

This proposed rule would require manufacturers and applicants to distribute labeling electronically via posting on FDA's labeling repository. We propose to require submission of the prescribing information, in a format that FDA can process, review, and archive for distribution via the FDA's labeling repository Web site. Generally, it is expected that labeling can be posted as early as the next business day following its submission to FDA. In the case of a labeling change submitted in a prior approval supplement, the proposed regulation would require applicants to submit the labeling within 2 business days following FDA approval of the supplement.

For changes contained in a CBE supplement, the labeling should be submitted to FDA on the same day that a CBE supplement is submitted to the Agency. Minor changes to the prescribing information that would normally be documented in the applicant's annual report to FDA would still be reported and described in the annual report, but the prescribing information reflecting the labeling update would be sent to FDA at the time of the change for posting on FDA's labeling repository Web site. This will help to ensure that the most current labeling is considered by FDA and available to the public.

III. Public Hearing on the Electronic Distribution of Prescribing Information

A. Summary of Comments

In the **Federal Register** of April 2, 2007 (72 FR 15701), we announced a public hearing to solicit views and information from interested parties concerning the concept of electronic distribution of FDA-approved prescribing information currently contained in the package insert for human prescription drug and biological products. We also sought information on the feasibility of establishing a modern and efficient process for industry to electronically distribute prescribing information to dispensers and asked specific questions to evaluate the possible benefits of electronic prescribing information and the logistics of such an electronic system (72 FR 15701 at 15702). At the public hearing, we explained that FDA is committed to facilitating the transition to use of electronic information and capitalizing on the efficiencies that an electronic environment could offer. The public hearing and comments submitted to FDA in connection with the public hearing suggested that:

- The majority believe that electronic distribution of prescribing information would give health care professionals access to the most current information in the labeling, and this would result in better care for patients and improved public health.
- Electronic distribution of prescribing information would be better for the environment (because most prescribing information provided in paper form is discarded) and could be more user-friendly if individuals are able to manipulate font sizes to make the print larger and easier to read.
- Use of electronic distribution of prescribing information should not impose undue hardship on pharmacists and pharmacies in regard to workflow, process, and costs related to implementing a new system (which may include training, maintenance, and printing).
- Education or training should be provided to health care professionals if FDA converts to electronic distribution of prescribing information.
- There are varying opinions as to whether FDA should require electronic distribution of prescribing information for all prescription drugs, whether there should be a transition period whereby paper forms would coexist with the electronic format, and whether certain drugs, due to warnings for the drugs or special instructions regarding their use, always should be accompanied by prescribing information in paper form.
- Parties also differed as to whether we should provide for other sources of prescribing information if emergency situations resulting in a loss of electricity or Internet access arose. Some suggested that we should create an annual compendium that health care professionals could consult as a backup resource.

B. FDA's View on the Comments and Testimony

We considered these comments in drafting this proposed rule. For example, FDA agrees that electronic distribution of prescribing information should give health professionals access to the latest information for a particular human prescription drug and contribute to improving patient care. The paper prescribing information that is the subject of this proposed rule is the version that is on or within the package from which the drug is to be dispensed (*e.g.,* the bulk pharmacy package). In general, prescribing physicians do not dispense drugs, so they usually do not have access to the paper version appended to the bulk pharmacy package. Instead, they use electronic or paper versions (*e.g.,* compendia such as the Physicians' Desk Reference (PDR)) and would have access to FDA's labeling repository. Pharmacists that currently use the paper prescribing information will need to seek drug information by accessing FDA's up-to-date electronic labeling repository or by requesting the paper version of the prescribing information from the manufacturer or, if needed, consulting another source (*e.g.,* paper or electronic compendia). Patients generally do not receive the paper prescribing information, but they would also have access to up-to-date electronic prescribing information from FDA's labeling repository Web site. Since patient labeling is not subject to this rule, warnings, risk information, and special instructions for use in patient labeling will continue to be provided in paper form to patients.

We also agree that electronic distribution of prescribing information may reduce waste. We have heard anecdotally that the paper form of prescribing information is not generally used and is frequently discarded with the drug packaging to conserve shelf space in the pharmacy. However, we did not evaluate the environmental impacts resulting from fewer paper forms of labeling and did not cite environmental benefits as a justification for this proposed rule.

We also agree that electronic prescribing information is more user-friendly. Pharmacists have stated that the paper version is very difficult to read because of small font sizes and hard to keep organized once it is unfolded. The user of an electronic version would have ability to make the print larger and easier to read, and to navigate the prescribing information through the use of hyperlinks.

This proposal represents a continuation of our efforts to improve access to prescription drug labeling and to make a transition from paper to electronic distribution of prescribing information so that health care providers utilize the most up-to-date version of the prescribing information. To help understand the impact of this proposed rule, we invite any additional comments on the use of prescribing information by prescribers and other health care professionals, as well as consumers/patients.

IV. Description of the Proposed Rule

A. Labeling Accompanying the Product

Section 201(m) of the FD&C Act defines ''labeling'' to mean ''all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.'' For purposes of this rulemaking only, we consider electronic distribution of prescribing information to be ''accompanying'' the drug, through the label statement directing interested parties to access the prescribing information through the Internet or other electronic means.

B. Label Statement

Proposed §§ 201.100(b)(8) and 610.61(t) would require a statement to appear on the immediate container label (or be affixed to the immediate container by other means such as a peel-back label) and the outer container or package stating that to obtain the current prescribing information, go to *labels.fda.gov* or call (insert the toll-free telephone number) for a faxed, emailed, or mailed copy. In order to ensure that it is readable, the statement would be required to be no smaller than 6-point type.

Proposed § 610.60(a)(8) would require biological product containers capable of bearing a full label to bear the statement. However, we do not propose to amend § 610.60(c) or (d) to require the statement to appear on the container label or to be affixed to the immediate container by other means for containers that bear only a partial label or no container label. Consistent with current § 610.60(c) and (d) and proposed § 610.61(t), containers capable of bearing only a partial label and containers incapable of bearing a label must be placed in a package that must have a label bearing the required statement detailed in this proposed rule. FDA recognizes that the package may be discarded at the time containers are stored and invites comment on the availability of the package in cases where the immediate container label does not have adequate space for the required statement.

Proposed § 606.121(c) would require the container label of blood and blood components to bear the statement: See circular of information for indications, contraindications, cautions, and methods of infusion. To obtain the current circular of information, go to *labels.fda.gov* or call (insert toll-free telephone number) for a faxed, emailed, or mailed copy. In order to ensure that it is readable, the statement would be no smaller than 6-point type. If the immediate container label is too small to accommodate the statement, the statement must be affixed to the immediate container by other means, such as a peel-back label.

We request comment on the feasibility of requiring a statement of this length on containers such as small volume single dose vials and syringes of product, some of which already bear one or more peel-off labels for product identification and inclusion in patient charts. In addition, we request comments on whether the new required statement will diminish the ability to include peel offs for inclusion in patient charts.

In order to ensure that the prescribing information is accessible in situations when Internet access is not available to the health care professional seeking the current prescribing information, the manufacturer or applicant would be required to print a toll-free telephone number in the statement appearing on the immediate container label and outer container or package that the health care professional could call to have the manufacturer or applicant send the most current prescribing information by FAX, email, or mail. This is intended primarily for use by health care professionals without regular access to the Internet, but could also be used in the case of a public health emergency or natural disaster to the extent that the emergency responders retain some means of communication, *e.g.,* telephone and fax. As discussed in section I.C.3, we expect that in most emergency situations, first responders and other deployed units would be prepared with the key information from prescribing information necessary to appropriately dispense medications in an emergency, even if Internet and other methods of communication are unavailable.

Under proposed § 201.100(c)(5), the manufacturer or applicant would be required to ensure that the toll-free telephone number is current, fully functioning, and maintained so that there is always an alternate method to obtain the current prescribing information if the requestor cannot access the FDA's labeling repository Web site. The toll-free telephone number service would be required to be available 24 hours a day, 7 days a week. If a request is received for a FAX, email, or mailing of the current prescribing information, the manufacturer or applicant would be required to take adequate steps to ensure that it provides the requested prescribing information promptly. As previously noted, the requirements of this regulation, including the requirement to provide the toll-free number and to provide the requested prescribing information applies to all manufacturers, including repackagers and relabelers. Thus, each manufacturer would be required to provide a toll-free number on the label and outer container and to respond to requests for faxed, emailed, or mailed copies of the labeling. FDA invites comment on whether these alternatives available on request through the telephone are sufficient methods for obtaining the current prescribing information if it cannot be accessed using the Internet. FDA also invites comment on what would be considered a reasonable amount of time to respond to a request for current prescribing information. The proposed requirement is to ''promptly'' respond.

C. Paper Versus Electronic

Under proposed § 201.100(c)(3), the covered prescribing information would be distributed electronically and would not be distributed in paper form, except where a paper copy is requested or where an exemption is granted. By contrast, FDA-approved patient package inserts, including patient instructions for use, Medication Guides required under 21 CFR part 208, and any other type of patient labeling are not within the scope of this rule and would continue to be provided in paper form.

The Web site *labels.fda.gov* presently holds prescribing information submitted to the Agency under current requirements, such as with listing information and annual reports. It is searchable by proprietary name, active ingredient, company name, NDC number, and application number or regulatory citation. We note that certain classes of products, such as cord blood products, may not have a proprietary name or NDC number, and we request comment on other categories by which the repository should be searchable. FDA also solicits comment regarding the ease of use of the *labels.fda.gov* Web site.

D. Exemptions

Under proposed § 201.100(g) a manufacturer or applicant would be able to submit a written request to FDA for exemption of a human prescription drug from the requirements for electronic distribution of prescribing information. The person requesting the exemption would be required to describe the reasons that compliance with the electronic distribution of prescribing information requirements could adversely affect the safety, effectiveness, purity, or potency of the drug; is not technologically feasible; or is otherwise inappropriate; and explain why the concerns underlying the

request could not reasonably be addressed by other measures. Additionally, FDA, on its own initiative, would be able to exempt a drug from the requirements for electronic distribution of prescribing information, if FDA determines that compliance with the electronic distribution of labeling requirements could adversely affect the safety, effectiveness, purity, or potency of the drug; is not technologically feasible; or is otherwise inappropriate. Examples of circumstances where it may be appropriate to exempt a product from the requirements for electronic distribution of prescribing information include a product which requires multiple steps for reconstitution, a product that is intended for use in an emergency room, or a product that may be stockpiled for use during an emergency. In addition, many cell therapy products require proper handling, preparation, and administration of the final licensed product to ensure that the correct product has been received; that the product remains viable, pure, and potent; and that the product is administered safely. Because steps for ensuring the safety and effectiveness of cell therapy products are important, we request comment on the feasibility of the application of electronic distribution of prescribing information under this proposed rule for cellular therapy products regulated under section 351 of the PHS Act.

We propose that requests for exemption be directed to the appropriate review division and submitted to the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research at the addresses in proposed § 201.100(g)(2). We plan to issue guidance prior to the effective date of the final regulation to inform manufacturers of any additional means of submitting requests for exemption, such as electronic submission.

E. Submission of Most Current Version of Prescribing Information to FDA

This proposed rule would require submission of the prescribing information, in a format that FDA can process, review, and archive, for distribution via FDA's labeling repository Web site. For newly approved drugs, proposed § 201.100(c)(4) would require that applicants, including NDA, BLA, and ANDA applicants, submit prescribing information in this format in time for the prescribing information to be posted in the labeling repository before the drug enters interstate commerce. For drugs already approved, proposed § 201.100(c)(4) would require applicants or manufacturers to submit the most current labeling to FDA each time the prescribing information is changed, including those changes submitted as supplements or in an annual report (§§ 314.70 and 601.12). Compliance with this proposed section would not exempt applicants from compliance with § 314.70 or § 601.12, related to supplements and other changes to approved applications, including for labeling. Applicants would be required to submit updated labeling within 2 business days of FDA approval of a prior approval supplement. Under the proposed regulation, labeling should be submitted to FDA for distribution on the same day that a CBE supplement is submitted to the Agency under § 314.70(c)(6). Manufacturers who are not applicants, for example, repackers, would be required to submit the prescribing information within 2 business days of the posting of the applicant's updated labeling. For unapproved drugs, the person responsible for the content of labeling must submit the labeling within 2 business days of a change to the labeling. Finally, with regard to supplements to ANDAs, we request comment on whether a conforming amendment cross-referencing § 201.100 should be added to § 314.97, which addresses the requirements for submitting supplemental applications and other changes to an approved abbreviated application.

A primary reason for migrating to electronic prescribing information is to ensure that the most up-to-date information about the drug product is available. Currently, per § 207.30(a), every manufacturer required to list drugs under § 207.20 must review and provide updated listing information to the Agency, including labeling, each subsequent June and December, or at their discretion as the change occurs. To minimize the number of submissions to the Agency, if a supplemental change to the prescribing information is submitted to FDA under proposed § 201.100(c)(4) before the required submission for updating electronic registration and listing (part 207), and there is no additional change to the labeling between the time of the § 201.100(c)(4) submission reflecting the supplemental change and the date on which updated drug listing information would be required to be submitted under § 207.30, then this labeling information would not need to be submitted again when electronic registration and listing information is updated.

FDA anticipates that prescribing information will be posted on the next business day following the date of submission. In addition, under proposed § 201.100(c)(4), it would be the responsibility of the entity who submits the labeling to verify, within 2 business days of submission to the FDA labeling repository, that the correct version of the prescribing information is being distributed at FDA's labeling repository Web site and available for public access. FDA would not be responsible for incorrect prescribing information that is submitted and then posted. If prescribing information is not posted to the labeling repository within 2 business days of submission, the manufacturer, applicant, or other person submitting the labeling must notify FDA's SPL Coordinator by calling 1–888–463–6332 or emailing *spl@fda.hhs.gov* within 4 business days of submission. If the manufacturer, applicant, or other person submitting the labeling observes that incorrect prescribing information has been posted on the labeling repository, that person must contact FDA's SPL Coordinator by calling 1–888–463–6332 or emailing *spl@fda.hhs.gov* within 2 business days of its posting. We invite comment on whether this is a sufficient amount of time for a manufacturer or applicant to check the accuracy and completeness of the posted prescribing information. The SPL coordinator should be provided information such as the NDC code, drug name, and a description of the problem with the labeling. If updates to labeling are not provided as required, labeling posted on FDA's labeling repository Web site will be outdated and inaccurate. Outdated labeling posted on the labeling repository renders a product misbranded and in these cases the applicant or manufacturer may be subject to enforcement action by the Agency.

F. Conforming Amendments

We propose the following conforming amendments. Proposed § 201.100(b)(7), would replace the phrase on or within the package from which it is to be dispensed with the phrase either on or within the package from which it is to be dispensed or accompanying the package from which it is to be dispensed under 21 CFR 201.100(b)(8). Proposed §§ 201.100(c)(1) and (d)(2), 201.306(a)(1)(ii) and (b)(2), and 201.310(a) would replace the phrase on or within the package from which the drug is to be dispensed with the phrase either on or within the package from which the drug is to be dispensed or accompanying the package from which the drug is to be dispensed under 21 CFR 201.100(b)(8). The first sentence of § 201.100(d) would be revised to state

whether or not it is on or within a package from which it is to be dispensed or accompanying a package from which the drug is to be dispensed under 21 CFR 201.100(b)(8).

Proposed § 201.100(d)(4) would require that promotional labeling continue to be disseminated with a copy of FDA-approved product labeling in paper form. This requirement would ensure that, for example, a health care professional that receives promotional labeling or detailing materials containing promotional claims would also have the full FDA-approved product labeling readily available in paper form.

The introductory paragraph of § 606.122 would be revised to replace the phrase must be available for distribution with the phrase must be distributed electronically. Finally, paragraph (k) of § 610.61 would be revised to state that the route of administration recommended, or reference to such directions in an enclosed circular or the electronic prescribing information and paragraph (n) would be revised to state that the inactive ingredients when a safety factor, or reference to an enclosed circular or the electronic prescribing information.

V. Legal Authority

FDA is authorized under various sections of the FD&C Act to require that prescribing information be distributed electronically and to require that paper copies of the prescribing information no longer be distributed, except as provided in this regulation, to ensure that human prescription drugs have adequate directions for use and to ensure the efficient enforcement of the FD&C Act. These sections include sections 201(n), 502, 503, 505, and 701(a) of the FD&C Act (21 U.S.C. 321(n), 352, 353, 355, and 371(a)), and section 351 of the PHS Act (42 U.S.C. 262). The electronic distribution of prescribing information for human prescription drugs would permit the efficient enforcement of the misbranding provisions in sections 502(a) and (f) of the FD&C Act, as well as the safety and effectiveness provisions of section 505 of the FD&C Act.

First, FDA has the authority to require that the prescribing information be distributed electronically, rather than by the shipment of a paper copy of the prescribing information with each container of a prescription drug. Under section 502(f) of the FD&C Act, a drug or device is deemed to be misbranded unless its labeling bears adequate directions for use, adequate warnings against use by patients where its use may be dangerous to health, and adequate warnings against unsafe dosage or methods or duration of administration, in such manner and form as are necessary to protect users. (See 21 U.S.C. 352(f).) Adequate directions for use means directions under which the layman can use a drug safely and for the purposes for which it is intended. (See 21 CFR 201.5.) Additionally, section 502(f) of the FD&C Act authorizes FDA to create a regulatory exemption from this requirement.

Under this authority, FDA has issued regulations exempting drugs subject to section 503(b)(1) of the FD&C Act (prescription drugs) from the requirements of section 502(f)(1) of the FD&C Act if certain conditions are met. (See *e.g.,* 26 FR 8389 (September 6, 1961) (final rule amending then § 1.106 (21 CFR 1.106)); see also 17 FR 6818 (July 25, 1952) (final rule amending then § 1.106).) The 1961 amendments to then § 1.106 exempted a drug subject to section 503(b)(1) of the FD&C Act from section 502(f)(1) of the FD&C Act if, among other things, labeling on or within the package from which the drug is to be dispensed bears adequate information for its use, under which professionals licensed by law to administer the drug can use the drug safely and for the purposes for which it is advertised or represented. (See § 1.106(b)(3).) The relevant provision of the exempting regulations is currently codified at § 201.100(c)(1). Section 201.100(c)(1), like its predecessor § 1.106(b)(3), exempts a drug subject to section 503(b)(1) of the FD&C Act from section 502(f)(1) of the FD&C Act if labeling on or within the package from which the drug is to be dispensed bears adequate information for its use, under which professionals licensed by law to administer the drug can use the drug safely and for the purposes for which it is advertised or represented. Subsection (c)(2) provides that, for an article subject to section 505 of the FD&C Act, the labeling bearing such information is the labeling authorized by the approved new drug application or required as a condition for the certification or the exemption from certification requirements applicable to preparations of insulin or antibiotic drugs. (See § 201.100(c)(2).)

The review in this proposed rule of the language of the exempting regulations shows that, for decades, the mechanism through which the pharmaceutical industry has met the requirement for exempting a prescription drug from section 502(f)(1) of the FD&C Act is the shipment of a paper copy of the prescribing information with each container of a prescription drug. The statutory language authorizing FDA to create a regulatory exemption from the requirements of section 502(f)(1) of the FD&C Act is broad. We have concluded that nothing in the statutory language mandates that the regulatory exemption can be met only through shipment of a paper copy of the labeling accompanying each container of the drug. Advances in technology now allow for the electronic distribution of labeling, an option that was not feasible at the time FDA initially issued the predecessor to this proposed regulation.

The electronic distribution of prescribing information is expected to advance: (1) The provision of adequate directions for use to persons prescribing, dispensing, and administering the drug; (2) the provision of adequate warnings to prescribers against use in patients where a drug's use may be dangerous to health; and (3) the prevention of unsafe prescribing of prescription drugs. Currently, the prescriber, health care provider, or pharmacist may review a paper copy of the labeling that has been shipped and stored with a drug for a number of months and that may not contain the most recent information with regard to indications, warnings, or directions for use. In contrast, the electronic distribution of prescribing information provides access to the most recent information about the directions for use, warnings, and contraindications. This information will be available within days of a change via posting on the FDA labeling repository or by FAX, email, or mail. Accordingly, FDA has concluded that it has the authority to amend § 201.100(c)(1) to require that the exemption from section 502(f)(1) of the FD&C Act must be met through electronic means.

Second, FDA concludes that it has authority to base the regulatory exemption from the adequate directions for use requirements of section 502(f) of the FD&C Act on the condition that a paper copy of the prescribing information not be shipped with each container of the drug, except where FDA has concluded that compliance with electronic distribution would adversely affect the safely, effectiveness, purity, or potency of the drug; is not technically feasible; or is otherwise inappropriate. Although the regulation exempting prescription drugs from the requirement to provide adequate directions for use has previously conditioned the exemption on distribution of paper copies of the prescribing information, at the time those regulations were drafted

the electronic distribution of prescribing information was not feasible. As described in this document, given the shelf life of many prescription drug products, changes to the prescribing information may occur between the time a product is shipped from the manufacturer and the time the product is received at the pharmacy or health care facility. Changes to the prescribing information may also occur during the time that the drug is stored at the pharmacy and prior to the time it is dispensed. Under such circumstances, a pharmacist or health care provider who relies upon a paper copy of the labeling, rather than the electronic version, may not have access to the current version of the prescribing information, including the latest warnings or contraindications that may appear in the electronic version of the prescribing information at the time a drug is prescribed and dispensed. Thus, where the electronic distribution of labeling is feasible, the continued distribution of paper labeling is not always sufficient to ensure that the products have adequate directions for use, adequate warnings against use by patients where its use may be dangerous to health, and adequate warnings against unsafe dosage or methods or duration of administration, in such manner and form as are necessary to protect users.

In contrast, the electronic distribution of prescribing information would make it easier for the person prescribing, dispensing, or administering the drug to have full access to all of the drug's current prescribing information, including directions for use, warnings, and contraindications. Specifically, the electronic distribution of the prescribing information via its placement in the FDA labeling repository, accessible through FDA's Web site, would better ensure that pharmacists and other health professionals have access to the most recent version of the directions for use and to the most current warnings and contraindications. With the electronic distribution of prescribing information, pharmacists and health care professionals would have timely access to the most current version of the prescribing information, in contrast to the paper form of the prescribing information, which may contain outdated information by the time it reaches the pharmacist or other health care professional. For these reasons, FDA has concluded that it has legal authority to require the prescribing information no longer physically accompany the product in paper form, except as provided in the exempting provisions of this proposed regulation.

Third, we conclude that FDA has the legal authority to require the label to bear a statement including the FDA labeling repository Web site where the electronic prescribing information will appear and a toll-free telephone number maintained by the manufacturer or applicant and that a manufacturer or applicant must maintain a toll-free telephone number through which individuals may request the prescribing information to be faxed, emailed, or mailed.

As explained in this document, section 502(f) of the FD&C Act provides that a drug is misbranded unless its labeling bears adequate directions for use, adequate warnings against use by patients for whom use may be dangerous to health, and adequate warnings against unsafe dosage or methods or duration of administration in such manner and form as necessary to protect users. Since this rule would make the distribution of this information electronic, the requirement that the Internet address and telephone number appear on the label is necessary so that a health care professional prescribing, administering, or dispensing the product would have the information needed to access the most current prescribing information. This statement will ensure that health care providers are directed to the FDA labeling repository (which will contain the most updated version of the prescribing information), as opposed to other electronic versions of the prescribing information, which may not be updated as frequently as the FDA labeling repository. Similarly, the toll-free number and the requirement that manufacturers and applicants maintain labeling via FAX, email, or mail will ensure that health care providers and pharmacists without Internet access can obtain the most current version of the prescribing information. Thus, this requirement ensures that the prescribing information bearing adequate directions for use, adequate warnings against use by patients for whom use may be dangerous to health, and adequate warnings against unsafe dosage or methods or duration of administration in such manner and form as necessary to protect users accompanies the drug.

In addition, section 502(a) of the FD&C Act prohibits false or misleading labeling of drugs, including the failure to reveal material facts relating to potential consequences under customary conditions of use under section 201(n) of the FD&C Act. The requirement that the label include the Internet address of the FDA labeling repository and the manufacturer's or applicant's telephone number ensures that the drug product will have accompanying labeling, which should include relevant information such as the drug strength, dosage form, route of administration, active ingredient, and drug interactions. In addition, it ensures that the prescribing information is accurate, up-to-date, and readily available to the health care provider. Because the labeling that is linked to the drug product via either the Internet address or the telephone number includes material facts relating to potential consequences under customary conditions of use under section 201(n) of the FD&C Act, the requirement that the Internet address and telephone number be placed on the label is also justified under section 502(a) of the FD&C Act. Furthermore, section 701(a) of the FD&C Act authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act.

For all these reasons, FDA concludes that we have the legal authority to require that the prescribing information be provided electronically, rather than by the shipment of a paper copy of the prescribing information with each container of a prescription drug (except where exempted by this regulation), and to require that the label bear a statement including the Internet address where the electronic labeling may be found and a toll-free telephone number through which individuals may request the prescribing information by other means (such as by FAX, email, or mailing of a paper copy).

VI. Environmental Impact

The Agency has determined under 21 CFR 25.30(i) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection are given under this section with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite 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.

Title: Electronic Distribution of Prescribing Information for Human Prescription Drugs, Including Biological Products

Description: The proposed rule would amend certain labeling regulations to require applicants or manufacturers of human prescription drugs (including biological products and blood and blood components intended for transfusion) to distribute the prescribing information for these drugs electronically. This information is currently distributed in paper form on or within the package from which a prescription drug is dispensed. The electronic distribution requirements of this regulation would not apply to patient labeling (including patient package inserts and Medication Guides), which would continue to be provided in paper form, as currently required by applicable regulations. The proposed regulation would require manufacturers and applicants to submit labeling containing prescribing information to FDA for distribution via FDA's labeling repository Web site every time there is a change in the labeling and to review the labeling posted at FDA's Web site to ensure that the correct version of the labeling appears in the repository. The regulation would require a product's immediate container label or a label affixed to the immediate container by other means, such as a peel-back label (if the immediate container label is too small to bear the statement) and outside package to bear a statement directing health care professionals to FDA's labeling repository to view the electronic version of prescribing information and to provide a toll-free telephone number maintained by the manufacturer to receive requests that the manufacturer send an emailed, faxed, or mailed paper copy of the prescribing information. The prescribing information would be distributed in paper form where a pharmacist or health care provider requests that the manufacturer send a paper copy of the labeling or where an exemption to the electronic distribution of labeling requirements has been granted. Manufacturers and applicants of exempted products would distribute prescribing information in paper form on or within the package from which the product is dispensed and would not be required to distribute the labeling electronically or by FAX, email, or mail. We are taking this action to help ensure that the most current prescribing information is publicly accessible for the safe and effective use of the product.

Description of Respondents: Persons and businesses, including small businesses and manufacturers responsible for the labeling of prescription drugs, including applicants, repackagers, relabelers, and persons responsible for the labeling of unapproved drugs.

A. Summary of Provisions in Proposed Rule That Contain Collections of Information

1. Labeling Accompanying a Product To Include Electronic Distribution of Prescribing Information (proposed §§ 201.100(c)(1), (c)(3), (c)(4), (c)(5), (d), and (d)(2); 201.306; 201.310; 606.122; 610.61(k) and (n))

This proposed rule would require that prescribing information be distributed through electronic means, unless FDA exempts a specific product from the electronic distribution requirement or unless the manufacturer is requested to send a paper copy of the labeling. The addition of new § 201.100(c)(3) would require prescribing information to be distributed electronically and, with the exceptions noted in this document, not in paper form. The mechanism by which the labeling will be distributed electronically would be through posting on the FDA labeling repository at *labels.fda.gov.* The labeling repository would be initially populated with labeling that had already been electronically submitted to FDA to comply with current requirements (part 207, and §§ 314.50(l), 314.94(d), 601.14). On the effective date of this regulation, manufacturers and applicants would not need to make a new submission of labeling to FDA under this regulation if the labeling available in the repository is current. However, before distributing product with labels directing users to *labels.fda.gov* for prescribing information, the manufacturer or applicant must review the prescribing information in the repository, and, if the prescribing information in the repository is not current, must submit the current version of the prescribing information.

This proposed rule would revise § 201.100, with the addition of paragraph (c)(4), which would require that, upon initial approval of a drug, or following any change to approved labeling, the applicant or other manufacturer must submit the content of labeling in an electronic format to FDA at the time of the change for distribution via the FDA's labeling repository Web site. Minor changes to the prescribing information would continue to be reported in the applicant's annual report; however, the revised labeling would be required to be submitted to FDA at the time of the change for distribution via FDA's labeling repository Web site. Submissions at the time of a change would ensure that the most up-to-date prescribing information is posted on the FDA's labeling repository Web site and available to the public, particularly health care professionals, for use with the drug at the time it is prescribed, dispensed, or administered.

2. Label Statement for Human Prescription Drugs, Including Biological Products and Blood and Blood Components Intended for Transfusion, on the Product's Immediate Container Label and Outside Package (Proposed §§ 201.100(b)(8), 606.121(c), 610.60(a)(8), and 610.61(t))

Current §§ 201.100(b), 606.121, 610.60, and 610.61 set forth the information that is required to appear on the label of the prescription drug product or the container label and outside package of biological products. This proposed rule would require, except where an exemption is granted, that all immediate container labels and outside packages bear a statement directing users to the FDA labeling repository to obtain the current prescribing information or circular of information and to a toll-free number to request that this information instead be provided by mail, email, or FAX. In order to ensure that the statement is readable, this statement would be no smaller than 6-point type. Where the immediate container label does not have sufficient space to bear this statement, it would be required to be affixed to the immediate container by other means, such as a peel-back label.

3. Provision of Prescribing Information via Fax, Email, or Mail (Proposed § 201.100(c)(5)) and Exemptions (§ 201.100(g))

To ensure that the prescribing information is readily accessible if Internet access is not available to the health care professional seeking the current prescribing information, the label statement would be required to include a toll-free telephone number on

the product's immediate container label and outside package. The health care professional would call this number to request the most current prescribing information by FAX, email, or mail. The manufacturer would be responsible for ensuring that the toll-free telephone number is current, fully functioning, and maintained so that there is always an alternate method available (24 hours a day, 7 days a week) to obtain the current prescribing information if the requestor cannot access the information electronically. The manufacturer would be responsible for taking adequate steps to ensure that it promptly provides the prescribing information to the requestor.

Proposed § 201.100(g) would permit a manufacturer to request that a drug or biological product be exempt from the requirements for electronic distribution of labeling set forth in this section. The exemption request must document why compliance with the electronic distribution of labeling requirements could adversely affect the safety, effectiveness, purity, or potency of the drug; is not technologically feasible; or is otherwise inappropriate and must document that the concerns underlying the request could not reasonably be addressed by other measures. In addition, FDA would be able to exempt products on its own initiative. Manufacturers and applicants of exempted products would be required to distribute prescribing information in paper form on or within the package from which the drug is to be dispensed.

B. Estimates of Reporting Burden

1. Electronic Submissions of Prescribing Information to the Agency, for Inclusion in the Electronic Labeling Repository (Proposed § 201.100(c)(4))

Prescribing information for prescription drugs (*i.e.,* content of labeling required under § 201.100(d)) already must be submitted to the Agency in an electronic format that the Agency can process, review, and archive as part of NDAs, ANDAs, BLAs, and annual reports. (See §§ 314.50(l), 314.94(d), 601.14(b), and 314.81(b).) These submissions are approved by OMB under the PRA under OMB control numbers 0910–0530 and 0910–0338. In addition, under section 510(p) of the FD&C Act, enacted in 2007, listing information required to be submitted under section 510(j) of the FD&C Act and implementing regulations in part 207 has been required to be submitted electronically since June 2009. Labeling for all drugs is a subset of that information, including prescribing information both for prescription drugs that are subject to approved NDAs, ANDAs, and BLAs, and for prescription drugs that are not subject to approved applications. Information collections associated with the electronic submission of listing information are approved under OMB control number 0910–0045. In May 2009, FDA issued a guidance entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing,'' (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm072339.pdf*. In this guidance, FDA explained that labeling updates to applications under the content of labeling regulations could be duplicative in content and format of labeling required to be submitted for listing under part 207. To avoid duplicative submissions, FDA recommended that applicants simultaneously fulfill the ''content of labeling'' and listing requirements regarding submission of labeling by submitting a single SPL file through the listing system and cross-referencing it in their applications.

FDA intends to adopt the same electronic format used in these other submissions (currently SPL) for submitting labeling required under this proposed regulation. FDA intends to use labeling previously submitted under these other provisions to initially populate the labeling repository prior to the effective date of the rule, so that where labeling is current, no new submissions will be needed to achieve initial compliance. Further, if this proposed rule becomes final, going forward, a single submission will in many cases fulfill the requirements under this regulation, under the content of labeling requirements in parts 314 and 601, and under certain provisions of part 207. Because this regulation would require submission of labeling in electronic form prior to the time at which such labeling must be submitted under those other provisions (and therefore, may result in some additional submissions not accounted for in those information collections), in the burden estimates that follow, FDA has included the estimated burden of all submissions that would be required to meet the terms of this proposed regulation, without excluding those that would duplicate submissions already addressed under one of the previously named provisions. In the future, however, FDA anticipates that if this rule becomes final and its information collection provisions are approved, it would be appropriate to reduce the estimated information collection burdens approved under control numbers 0910–0530, 0910–0338, and 0910–0045, as FDA does not intend to require duplicative submissions.

To estimate the burden hours per submission, we adopted an estimate of 1.25 hours per submission (which was the time estimate used for submission of electronic content of labeling under the most recent OMB extension of approval for that information collection, approved under OMB control number 0910–0338, which expires on January 31, 2017). The total estimated number of labeling submissions is the sum of several items.

The proposed regulation would require applicants to submit the labeling upon initial approval of a drug. To estimate the annual number of submissions for newly approved products, the Agency reviewed the number of NDA and ANDA approvals and new licenses for biological products to estimate the average number of approvals on an annual basis. We have estimated that there will be approximately 106 NDA applicants who had an average of 150 NDA approvals per year and approximately 250 ANDA applicants who had 1,200 ANDA approvals. We further estimate that approximately 25 respondents will have an average of 45 BLAs licensed on an annual basis. The total burden hour estimate for these submissions to the Agency is 1,744 hours ($1{,}395 \times 1.25 = 1{,}744$).

To estimate the number of labeling submissions that may occur due to updates to the labeling of currently marketed drugs for changes that would require a supplement to an application, we reviewed the number of supplements to NDAs and BLAs reflecting labeling changes that were submitted to FDA in fiscal year 2013 for drug and biological product manufacturers and applicants. An average of 200 applicants submitted an average of 5.5 supplements reflecting labeling changes per applicant per year to the Agency (n = 1,100). The burden hour estimate for these submissions to the Agency is 1,375 hours ($[200 \times 5.5] \times 1.25 = 1{,}375$).

Because this proposed rule would require that applicants submit labeling changes to FDA at the time of the change, there may be submissions to the Agency due to a minor labeling change that previously would have been submitted to the Agency with annual reports (§§ 314.81 and 601.12). To estimate the number of submissions for minor label changes, we assumed that the percentage of firms making label changes via annual reports would be similar to the percentage making changes via supplements and moderate

changes being effected in 30 days. Thus, we assumed that one change per applicant, (200 NDA/BLA firms, 225 ANDA firms, and 457 repackagers), for a total of 882 submissions. The total burden hour estimate for these submissions to the Agency is 1,103 hours ($882 \times 1.25 = 1,103$).

Holders of ANDA applications would also submit updated labeling if the applicant who holds the NDA for the innovator drug makes a change to its labeling. We estimate that, on an annual basis, 225 ANDA applicants will make 1,830 submissions of updated labeling. The total burden hour estimate for these additional submissions to the Agency is 2,288 hours ($1,830 \times 1.25 = 2,288$).

This regulation also would require repackagers and relabelers (who are subject to part 207 but not to parts 314 or 612) to submit labeling for their repackaged or relabeled products. Thus, each time an applicant submits updated labeling for a particular product for distribution via the repository, any manufacturers who repack or relabel that product would also be required to submit updated labeling for posting in the labeling repository. Based on the number of repackers and relabelers that would be subject to this proposal, we estimate that 169 repackers and relabelers would make approximately 566 submissions of updated labeling for NDA products for posting in the labeling repository. In addition, we estimate that 575 repackers and relabelers would make a total of 2,196 submissions of labeling due to an ANDA change. The total burden hour estimate for these submissions to the Agency is 3,453 hours ($2,762 \times 1.25 = 3,453$).

To estimate the annual burden on blood establishments of submitting updated versions of the circular of information and reviewing the posted circular of information, we have estimated that there are 1,300 blood establishments that will be affected by this regulation. The vast majority of blood establishments use the same circular of information, and we estimate that the circular of information will change once annually. Thus, the annual burden of submitting the circular of information is estimated to be 1,625 hours ($1,300 \times 1.25 = 1,625$).

The sums of all of these prior estimates are included in tables 1 and 2 as our estimates of the information collection burden associated with proposed § 201.100(c)(4). In developing our estimates for NDA, ANDA, and BLA products, we are not able to fully account for the possible overlap in respondents submitting labeling under each of the scenarios described in this document. For example, it is possible that a firm submitting labeling in conjunction with a new drug approval might also submit labeling to address a minor labeling change that is reportable in an annual report. In the number of respondents reported in the table, we have not attempted to account for this overlap, but have merely added the number of respondents from each subestimate. The result may be an overestimate of the number of respondents, and a consequent underestimate of the average number of responses per respondent. We invite comment on this and other aspects of our estimate.

2. Submission and Review of Circular of Information by Blood Establishments

Because FDA regulations do not currently require blood establishments to submit the circular of information electronically, blood establishments would be required to submit the circular of information to FDA prior to the effective date of this regulation. To estimate the burden on blood establishments of submitting updated versions of the circular of information, we have estimated that there are 1,300 blood establishments that will be affected by this regulation. The vast majority of blood establishments use the same circular of information. Thus, the initial burden of submitting the circular of information is estimated to be 1,625 hours ($1,300 \times 1.25 = 1,625$) (table 2).

3. Review of Accuracy and Completeness of Posted Prescribing Information (Proposed § 201.100(c)(4))

Because the labeling repository will be populated with labeling received by the Agency under current requirements, we do not expect a mass submission of prescribing information upon the effective date of this regulation. We require that manufacturers and applicants will verify the accuracy and completeness of the labeling already posted in the repository. This will ensure that labeling available via the FDA labeling repository is accurate and up-to-date. An estimate of establishments that would be affected by this rule was made based on information available in FDA's establishment and product listing databases for drug and biological products. An average of the estimated 1,500 to 2,000 drug manufacturers and applicants was combined with an estimate of 1,800 biological establishments (either licensed establishment or registered blood establishments) for an estimate of 3,550 possible respondents (1,750 + 1,800 = 3,550) for estimating the burden. Collectively, these respondents are responsible for producing 46,000 to 57,600 prescription drug products. An average of this range was used for determining the frequency of responses, resulting in 51,800 individual prescription drug products. The frequency of responses was determined by taking the number of individual prescription drug products divided by the number of respondents, resulting in an estimate of 14.60 responses per respondent. (51,800/3,550 = 14.60).

To estimate the burden hours associated with each submission, we adopted an estimate of 5 hours, which is equal to the time estimated for proofreading the electronic document in the electronic submission final rule (68 FR 69009). We believed this estimate would be similar to the estimate of the amount of time needed to review the accuracy and completeness of the posted prescribing information and compare it with the electronic file that was submitted to the Agency. Although a manufacturer may have to review the accuracy of more than one copy of a single version of the prescribing information that corresponds to multiple NDC numbers, we believe the 5-hour estimate is reasonable. We request comment on whether this estimate would be applicable to the proposed requirement for reviewing the accuracy and completeness of the prescribing information after it is posted. The total first year burden hour estimate for review for accuracy and completeness of the posted prescribing information is 259,150 hours ($3,550 \times 14.60 \times 5 = 259,150$) (table 2). This burden hour estimate includes the time for each manufacturer to review the accuracy and completeness of the prescribing information once it is posted, following a change to the labeling, on the FDA's labeling repository Web site.

In addition, on an annual basis, upon approval of a new NDA, ANDA, or BLA, or upon a change made to prescribing information, all manufacturers and applicants, including repackers of such products will be required to review for accuracy the newly posted prescribing information. As explained in this document, on an annual basis we estimate that there will be 1,395 labeling submissions for newly approved or licensed products (NDAs, BLAs, ANDAs), 1,100 labeling submissions for NDA/BLA supplements, 1,830 labeling submissions for ANDA supplements due to innovators' labeling changes, 882 labeling submissions for annual reportable changes, and 2,762 labeling submissions by repackers due to changes in NDA/ANDA holders' labeling. The total annual burden hour

estimate for review for accuracy and completeness of the posted prescribing information for these products is 13,480 hours ([1,395 + 1,100 + 1,830 + 882 + 2,762 = 7,969] × 5 = 39,845) (table 1). The annual burden of checking the circular of information for accuracy is estimated to be 6,500 (1,300 × 5 = 6,500). The total annual burden for drugs, biologics, and blood and blood components is 46,345 hours (table 1).

4. Production of New Product Labels for the Immediate Container Label and Outer Container or Package To Bear Label Statement (Proposed § 201.100(b)(8))

Under proposed § 201.100(b)(8), a new label statement would be required on a product's immediate container label (or on a label affixed to the container by other means, such as a peel-back label, if the immediate container is too small to bear the statement) and outer container or package. A portion of this statement, directing users to access *labels.fda.gov* to view electronic prescribing information, is information provided by FDA to manufacturers and applicants for disclosure to the public, and therefore does not constitute a collection of information under 5 CFR 1320.3(c)(2). However, the portion of the statement that provides a toll-free number for requesting prescribing information by mail, email, or FAX is not provided by FDA. Accordingly, we have accounted for the burden of including that statement. The frequency of responses was determined by taking the average of the estimated number of stock keeping units (SKUs) (150,000–200,000), divided by the number of respondents, resulting in an estimate of 49.3 responses per respondent (175,000/3,550 = 49.3). To estimate the burden hours associated with adding the statement to existing product labels, we adopted an estimate of 24 hours, which was the estimate used for redesigning labels to incorporate bar codes (see 69 FR 9119 at 9149; February 26, 2004). The total burden hour estimate for adding the new label statement to all presently marketed prescription drugs is 4,200,360 hours (3,550 × 49.3 × 24 = 4,200,360) (table 3).

In addition, immediate container labels and outside packages for newly approved products would need to be designed to include the statement. Because the inclusion of the statement would be one requirement of multiple requirements considered in preparing drug product labels, this burden is included as part of the overall burden to design, test, and produce the label for a drug product's immediate container and outer container or package. The format and content of prescription drug and biological product labels must comply with FDA regulations in 21 CFR part 201 for drugs, including § 201.100(b) and other sections in subparts A and B, and 21 CFR part 610 subpart G. For blood and blood components, the label must comply with 21 CFR part 606 subpart G. Based on characteristics of the product, there are some differences in the label requirements for prescription drugs, biological products and blood and blood components. However, in general, prescription drug labels contain the following information about the drug: (1) Proprietary and established name (or proper name for biological products); (2) recommended or usual dose; (3) route of administration; (4) any warnings or cautionary statements; (5) ''Rx only'' statement; (6) other required statements or information based on type of product; (7) quantity or proportion of each active ingredient, or amount of product; (8) names of inactive ingredients (if the drug is for other than oral use); (9) identifying lot or control number; (10) manufacturer name and address (and license number for biologics); (11) expiration date; and (12) barcode. Based on FDA's burden estimates for other types of drug product labeling and information from the pharmaceutical industry, FDA estimates that it takes applicants or manufacturers approximately 160 hours to design, test (*i.e.,* to ensure that the designed label fits on the drug product container or carton), and produce each prescription drug product label, including the statement required under proposed § 201.100(b)(8). Based on an average of the estimated number of SKUs (175,015) and the estimated number of respondents (3,550), as discussed previously, the total burden for the design, testing, and production of prescription drug product labels for existing products is approximately 28,002,400 hours (table 3). Going forward for newly approved drug products, we estimate that the total burden hours for the design, testing and production of new prescription drug product labels for a drug product's immediate container and outer container or package would be approximately 223,220 hours (table 4). This is based on the average annual submission of approximately 150 NDAs from approximately 106 applicants, approximately 1200 ANDAs from approximately 250 applicants, and approximately 45 BLAs from approximately 25 applicants.

5. Exemptions (Proposed § 201.100(g))

Under proposed § 201.100(g), the Agency would permit a manufacturer who markets a product to submit a written request to FDA for exemption of a human prescription drug, including a biological product, from the requirements for electronic distribution of prescribing information. We anticipate very few exemption requests will be submitted. Therefore, we estimate that approximately 10 manufacturers and applicants would request an exemption annually, and that each request would take approximately 1 hour to prepare and submit to FDA. In those instances where we grant an exemption, the covered prescribing information would be distributed in paper form by the manufacturer.

The total estimated annual reporting burden for this collection of information is as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1] [2]

Type of reporting and 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of updated labeling and circular of information under § 201.100(c)(4)	3,732	2.5	9,269	1.25	11,586
Review of accuracy of posted labeling and circular of information under § 201.100(c)(4)	3,732	2.5	9,269	5	46,345
Requests for exemptions under § 201.100(g)	10	1	10	1	10
Requests to receive prescribing information by fax, email, or mail when requested (§§ 201.100(c)(5) and 201.100(g))	129,090	1	129,090	*0.25	516,360

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1] [2]—Continued

Type of reporting and 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total					574,301

[1] Totals may not sum because frequency numbers are rounded.
[2] There are no capital costs or operating and maintenance costs associated with this collection of information.
* (15 minutes).

TABLE 2—ESTIMATED ONE-TIME REPORTING BURDEN [1]

Type of reporting and 21 CFR section	Number of respondents	Number of responses per respondent	Total one-time responses	Average burden per response	Total hours
Review for accuracy and completeness of posted prescribing information under § 201.100(c)(4)	3,550	14.60	51,830	5	259,150
Submission of circular of information by blood establishments under § 201.100(c)(4)	1,300	1	1,300	1.25	1,625
Total					260,775

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ONE-TIME THIRD-PARTY DISCLOSURE BURDEN [1]

Type of disclosure and 21 CFR section	Number of respondents	Frequency per disclosure	Total disclosures	Hours per disclosure	Total hours
Design, testing, and production of labels for existing products	3,550	49.3	175,015	160	28,002,400
Production of new label statement on immediate container label or outside package (Web site and toll-free number) under §§ 201.100(b)(8), 606.121(c)(8)(ii), 610.60(a)(8), and 610.61(t)	3,550	49.3	175,015	24	4,200,360
Total					32,202,760

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

Type of disclosure and 21 CFR section	Number of disclosures per respondent	Number of responses per respondent	Total annual disclosures	Average burden per disclosure	Total hours	Total capital, operating and maintenance costs
Distribution of prescribing information by fax, email, or mail when requested (§§ 201.100(c)(5) and 201.100(g)).	993	130	129,090	1	129,090	$26,500 to $90,750.
Design, testing and production of labels for new prescription drug and biological products and blood and blood components.	381	3.80	1,395	160	223,200	
Total					352,290	

C. Other Annualized Cost Burdens to Respondents: Operating and Maintenance Costs of the Toll-Free Telephone Number and Responding to Requests

This proposed rule would require that manufacturers provide and maintain a toll-free telephone number that users of prescribing information can call if they want the prescribing information to be faxed, emailed, or mailed to them. It was assumed that all manufacturers would use existing telephone infrastructure, and they would need to add options to the system so that someone could request the prescribing information in other forms, particularly if Internet access is not available. The costs would include labor costs to modify the phone system and to respond to requests. We will adopt the estimate for the annualized cost to have a functioning system and maintaining it from the economic impact analysis. The recurring annual costs to operate and maintain the toll-free telephone number and to send paper prescribing information upon request would range from $26,500 to $90,750 (Ref. 6). An average of this range will be used for this estimation, resulting in $58,619 per manufacturer.

Concerning the distribution of prescribing information by fax, email, or mail when requested (§§ 201.100(c)(5) and 201.100(g)), and based on data described in section IX.H of the Analysis of Impacts, we estimate that each manufacturer, repacker, relabeler, or contract manufacturer will receive approximately 130 requests annually to distribute prescribing information by fax, email, or mail, and that each distribution of prescribing information

would take approximately 1 hour (table 4). In addition, we estimate that each request to receive prescribing information by fax, email, or mail will take approximately 15 minutes (table 1).

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507)(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. To ensure that comments on the information collection are received by January 20, 2015, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the title ''Electronic Distribution of Prescribing Information for Human Prescription Drugs, Including Biological Products.''

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule, does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This proposed rule would be an economically significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The proposed rule would have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes 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 annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2013) Implicit Price Deflator for the Gross Domestic Product. FDA expects this proposed rule to result in a 1-year expenditure that would meet or exceed this amount.

Summary

The proposed rule would generate costs to set up a system for the electronic distribution of prescribing information for human prescription drugs. While this system may support other or all components of the product labeling in addition to the prescribing information, this proposed rule covers the prescribing information portion of product labeling.

The proposed rule would generate costs for users of prescribing information who would need additional hardware, training, Internet access, and information access time. In addition, incremental costs would be associated with some printing of the prescribing information. Table 5 shows a summary of the ranges of annualized costs using discount rates of 7 percent and 3 percent over 10 years. The proposed rule would generate benefits in the form of production cost savings because eliminating the production of most paper forms would reduce the costs of providing prescribing information on human prescription drugs. Table 5 shows the ranges of savings. The large ranges for both costs and savings indicate the uncertainty associated with such a large change in practices for such a large number of manufacturers and users. If we use a 7 percent discount rate to annualize the costs and savings over 10 years, the effects of the proposed rule could range from annualized net savings of $5.0 million to annualized net savings of $73.5 million. With a 3 percent discount rate to annualize cost savings, the effects could range from an annualized net savings of $10.0 million to annualized net savings of $82.2 million. These quantified effects do not include the public health benefits associated with users having access to the most up-to-date versions of the prescribing information.

The full assessment of the economic analysis is available in Docket FDA–2007–N–0363 and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 7).

TABLE 5—SUMMARY OF ANNUALIZED COSTS AND COST SAVINGS

[In millions]

	Low (7%)	High (7%)	Low (3%)	High (3%)
Cost Savings	$51.8	$163.7	$56.6	$170.8
Costs	46.8	89.2	46.6	88.6
Net Savings (Cost Savings − Costs)	5.0	73.5	10.0	82.2

X. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

XI. Proposed Effective Date

We propose that any final rule based on this proposal become effective 6 months after publication in the **Federal Register**. Implementation of this rule

would require that manufacturers and applicants have up-to-date electronic prescribing information posted on FDA's labeling repository Web site, that manufacturers and applicants have verified the content of that information, that the immediate container label and outer container or package bear the required statement, and that paper labeling no longer accompany the drug. The FDA labeling repository Web site is currently available at *labels.fda.gov* and is populated with prescribing information submitted to the Agency under current regulatory requirements, such as requirements to submit labeling with listing information or with annual reports. If the prescribing information available in the repository is current, manufacturers and applicants would not be required to resubmit labeling before beginning the electronic distribution of labeling.

Any human prescription drug that an applicant or manufacturer introduces into interstate commerce after the effective date that does not have accurate, complete, and updated electronic prescribing information available on FDA's labeling repository Web site, as well as the statement on the product's immediate container label and the outer container or package explaining how to access the information, or that continues to be accompanied by paper prescribing information would not meet the criteria to be exempt from the requirement to provide ''adequate directions for use'' and would be misbranded under section 502(f)(1) of the FD&C Act. As explained further in section XII, we understand that 6 months is not likely to be sufficient time for many manufacturers and applicants to implement this rule with regard to some or all of their marketed products. As a result, we are proposing to exercise enforcement discretion for 2 years from publication of the final rule. However, we anticipate that some will be able to comply with the rule beginning on the effective date. We want to ensure that those that are able to comply as soon as 6 months after publication can take advantage of the benefits of electronic distribution of labeling at that time and will no longer need to provide paper labeling with their products (as long as all other requirements of the rule are met). Because, technically, full implementation (elimination of paper labeling that accompanies the product) cannot take place until the rule is effective, a longer effective date could delay implementation by those able to comply as soon as 6 months after the publication date. We request comment on whether a 6 month effective date is sufficient given the concerns raised in the GAO report about potential workflow disruptions in pharmacies as a result of an online-only system for prescribing information. Additionally, FDA requests comments on whether a dual system, where the regulation would require distribution of both paper and electronic versions of labeling until the compliance date, is desirable and information about the potential benefits or consequences of such a requirement.

XII. Proposed Compliance Date

Given the time that may be needed for industry to make necessary changes to the drugs' immediate container labels and outer containers or packages to comply with this rule and to enable firms to exhaust existing stock of drugs already packaged with paper prescribing information, we propose a compliance date of 2 years after the final rule is published. Thus, until the compliance date, we will exercise enforcement discretion with regard to products subject to the electronic labeling requirements, so long as those products continue to be distributed with the current prescribing information in paper form. However, a product distributed between the effective date and the compliance date that bears the new required statement on the label and outer container must have the current electronic prescribing information in the labeling repository at *labels.fda.gov* and should not be accompanied by the paper prescribing information.

We note that registration and listing information for blood and blood components is currently not electronically submitted to the Agency. FDA is in the process of developing standards for the electronic submission of labeling for blood and blood components. The Agency will consider progress in developing such standards when setting a compliance date in a final rule for blood and blood components and/or on our own initiative grant an exemption for blood and blood components for a period of time until electronic submission of the labeling for blood and blood components is supported. Thus, the final regulation may include staggered compliance dates, with a later compliance date for blood and blood components and an earlier compliance date for all other drug products.

FDA is requesting comments on the proposed effective and compliance dates, and whether they are appropriate. Specifically, we request comment on whether a delayed compliance date would alleviate concerns raised in the GAO report about potential workflow disruptions in pharmacies as a result of an online-only system for prescribing information and, if so, how much additional time would be needed to change operations.

XIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*. (FDA has verified the Web site address in this reference section, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. ''Electronic Drug Labeling: No Consensus on the Advantages and Disadvantages of Its Exclusive Use,'' GAO–13–592, Report by the Government Accountability Office, July 8, 2013.
2. ''Analysis of the Feasibility of Safety Labeling Changes Implementation Timeline,'' Final Report by Eastern Research Group, Inc., June 22, 2012.
3. Ho, Y., Q. Chen, H. Nian, K.B. Johnson, ''An Assessment of Pharmacists' Readiness for Paperless Labeling: A National Survey.'' *Journal of the American Medical Informatics Association,* 1–6, 2013.
4. Internal analysis of safety-related labeling changes approved by FDA between 2003 and 2013.
5. Internal review of labeling changes for new molecular entities for calendar years 2005 to 2007.
6. ''Electronic Distribution of Labeling Proposed Rule Final Report Economic Impact Analysis,'' Report by Eastern Research Group, Inc., October 4, 2010.
7. Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis for Electronic Distribution of Prescribing Information for Human Prescription Drugs, Including Biological Products; Proposed Rule, available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public

Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 201, 606, and 610 be amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Amend § 201.100 as follows:

■ a. In paragraph (b)(7), remove the phrase ''on or within the package from which it is to be dispensed'' and add in its place ''either on or within the package from which it is to be dispensed, or accompanying the package from which it is to be dispensed under paragraph (b)(8) of this section'';

■ b. Add paragraph (b)(8);

■ c. In paragraph (c)(1) remove the phrase ''on or within the package from which the drug is to be dispensed'' and add in its place ''on or within or accompanying the package from which the drug is to be dispensed under paragraph (b)(8) of this section'';

■ d. Add paragraphs (c)(3) through (5);

■ e. Revise the introductory text of paragraph (d);

■ f. In paragraph (d)(2), remove the phrase ''on or within the package from which the drug is to be dispensed'' and add in its place ''on or within or accompanying the package from which the drug is to be dispensed under paragraph (b)(8) of this section'';

■ g. Add paragraphs (d)(4) and (g).

The additions and revisions read as follows:

§ 201.100 Prescription drugs for human use.

* * * * *

(b) * * *

(8) The statement: ''To obtain the current prescribing information, go to *labels.fda.gov* or call (insert the toll-free telephone number) for a faxed, emailed, or mailed copy.'' This statement must be no smaller than 6-point type. *Provided, however,* that in the case of a container too small or otherwise unable to accommodate a label with sufficient space to bear the statement, the statement shall be affixed to the immediate container label by other means, such as a peel-back label. *Additionally,* if the container is packaged within an outer container from which it is removed for dispensing or use, the statement shall also be included on the outer container or package.

(c) * * *

(3) Labeling containing prescribing information accompanying the package from which the drug is to be dispensed under paragraphs (b)(8) and (c)(4) of this section is distributed electronically and not in paper form except for any FDA-approved patient labeling, any labeling containing prescribing information that is distributed upon request by FAX or mail, any labeling distributed under the exemption provisions of paragraph (g) of this section that is on or within the package from which the drug is to be dispensed, and any prescribing information accompanying promotional labeling.

(4) Labeling containing prescribing information must be submitted to FDA in an electronic format that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (*e.g.,* method of transmission, media, file formats, preparation and organization of files). Upon initial approval of a new drug or biological product, labeling containing prescribing information must be submitted and posted before introducing the drug into interstate commerce. For drugs already approved under section 505 of the Federal Food, Drug, and Cosmetic Act or biological products licensed under section 351 of the Public Health Service Act, applicants must submit labeling containing prescribing information within 2 business days of a change to the prescribing information. For unapproved drugs, the person responsible for the content of labeling must submit labeling containing prescribing information within 2 business days of a change to the prescribing information. Other manufacturers, such as repackers or relabelers, must submit labeling containing prescribing information within 2 business days of the posting or new posting of an applicant's labeling. The entity responsible for submitting the labeling for the drug must verify that the correct version of the prescribing information appears on FDA's labeling repository Web site *labels.fda.gov*. The entity responsible for submitting the labeling must contact FDA's Structured Product Labeling Coordinator by calling 1–888–463–6332 or emailing *spl@fda.hhs.gov* within 4 business days of its submission if the labeling is not posted on FDA's labeling repository Web site or within 2 business days of its posting if the labeling that is posted is incorrect. Products with missing, inaccurate, false, misleading, or outdated labeling on the FDA's labeling repository Web site are misbranded.

(5) The applicant, manufacturer, or person responsible for the content of labeling must provide a toll-free telephone number in the label statement required in paragraph (b)(8) of this section.

(i) The applicant, manufacturer, or person responsible for the content of labeling must ensure that the telephone number is current, fully functioning, and maintained for 24 hours a day, 7 days a week.

(ii) The applicant, manufacturer, or person responsible for the content of labeling must have a fully functioning and maintained system to respond to requests to obtain an alternate form of the prescribing information which the manufacturer receives through the toll-free number. The applicant, manufacturer, or person responsible for the content of labeling must take adequate steps to provide the requested prescribing information promptly to the requestor.

(d) Any labeling, as defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act, whether or not it is on or within a package from which the drug is to be dispensed or accompanying a package from which the drug is to be dispensed under paragraph (b)(8) of this section, distributed by or on behalf of the manufacturer, packer, or distributor of the drug, that furnishes or purports to furnish information for use or which prescribes, recommends, or suggests a dosage for the use of the drug (other than dose information required by paragraph (b)(2) of this section and § 201.105(b)(2)) contains:

* * * * *

(4) In the case of prescribing information accompanying promotional labeling, the information required, in paper form and in the format specified, by §§ 201.56, 201.57, and 201.80.

* * * * *

(g) If FDA has granted an exemption of the drug from the requirements for the electronic distribution of labeling, the applicant, manufacturer, or person responsible for the content of labeling of unapproved drugs, distributes the content of labeling in paper form.

(1) On FDA's initiative, or in response to a written request from an applicant, manufacturer, or person responsible for the content of labeling of unapproved drugs, the appropriate Center Director may exempt a human prescription drug from the requirements for electronic distribution of labeling set forth in this section. The exemption request must document why compliance with the electronic distribution of labeling requirements could adversely affect the safety, effectiveness, purity, or potency of the drug; is not technologically feasible; or is otherwise inappropriate;

and must explain why the concerns underlying the request could not reasonably be addressed by other measures. If an exemption is granted, the applicant, manufacturer, or person responsible for the content of labeling of unapproved drugs must distribute the content of labeling in paper form.

(2) For products regulated by the Center for Drug Evaluation and Research, requests for an exemption should be sent to the Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, or for drug products for which there is no reference listed drug, to the Office of Generic Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. For products regulated by the Center for Biologics Evaluation and Research, requests for an exemption should be submitted to the attention of the appropriate Review Division in the relevant Center for Biologics Evaluation and Research Product Office using the following address: Center for Biologics Evaluation and Research, Food and Drug Administration, Document Control Center, 1401 Rockville Pike (HFM–99), Rockville, MD 20852.

■ 3. In § 201.306, revise paragraph (a)(1)(ii) introductory text and paragraph (b)(2) to read as follows:

§ 201.306 Potassium salt preparations intended for oral ingestion by man.

(a) * * *

(1) * * *

(ii) The labeling either on or within the package from which the drug is to be dispensed or accompanying the package from which the drug is to be dispensed under § 201.100(b)(8) bears adequate information for its use by practitioners in accord with the ''full disclosure'' labeling requirements of § 201.100, including the following warning statement: * * *

* * * * *

(b) * * *

(2) The labeling either on or within the package from which the drug is to be dispensed or accompanying the package from which the drug is to be dispensed under § 201.100(b)(8) bears adequate information for its use by practitioners in accord with the ''full disclosure'' labeling requirements of § 201.100, including a recommendation that patients be directed to dissolve any such tablets in an appropriate amount of liquid and to dilute any such liquid preparations adequately to assure against gastrointestinal injury associated with the oral ingestion of concentrated potassium salt preparations.

■ 4. In § 201.310, revise the third sentence of paragraph (a) to read as follows:

§ 201.310 Phenindione; labeling of drug preparations intended for use by man.

(a) * * * In view of the potentially serious effects found to be associated with preparations of this drug intended for use by man, the Commissioner of Food and Drugs will regard such preparations as misbranded within the meaning of section 502(f)(1) and (2) of the Federal Food, Drug, and Cosmetic Act, unless the label and labeling either on or within the package from which the drug is to be dispensed or accompanying the package from which the drug is to be dispensed under § 201.100(b)(8), and any other labeling furnishing or purporting to furnish information for use of the drug, bear a conspicuous warning statement to the following effect: * * *

* * * * *

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

■ 5. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

■ 6. In § 606.121 revise paragraph (c)(8)(ii) to read as follows:

§ 606.121 Container label.

* * * * *

(c) * * *

(8) * * *

(ii) ''See circular of information for indications, contraindications, cautions, and methods of infusion. To obtain the current circular of information, go to *labels.fda.gov,* or call (insert toll-free telephone number) for a faxed, emailed, or mailed copy.'' This statement must be no smaller than 6-point type.

* * * * *

§ 606.122 [Amended]

■ 7. In § 606.122 introductory text, remove the words ''must be available for distribution'' and add in their place ''must be distributed electronically.''

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 8. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 9. In § 610.60, add paragraph (a)(8) to read as follows:

§ 610.60 Container label.

(a) * * *

(8) The container label for biological products must bear the statement: ''To obtain the current prescribing information, go to *labels.fda.gov,* or call (insert the toll-free telephone number) for a faxed, emailed, or mailed copy.'' This statement must be no smaller than 6-point type. If the container label is incapable of bearing the statement due to inadequate space, the statement must be affixed to the container by other means, such as a peel-back label.

* * * * *

■ 10. In § 610.61, revise paragraphs (k) and (n) and add paragraph (t) to read as follows:

§ 610.61 Package label.

* * * * *

(k) The route of administration recommended, or reference to such directions in an enclosed circular or the electronic prescribing information;

* * * * *

(n) The inactive ingredients when a safety factor, or reference to an enclosed circular or the electronic prescribing information;

* * * * *

(t) The package label for products must bear the statement: ''To obtain the current prescribing information, go to *labels.fda.gov* or call (insert the toll-free telephone number) for a faxed, emailed, or mailed copy.'' This statement must be no smaller than 6-point type.

Dated: December 11, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29522 Filed 12–16–14; 11:15 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0661; FRL–9920–46–Region–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Ozone and $PM_{2.5}$ Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a submission by the State of Indiana as a revision to the Indiana State Implementation Plan (SIP). The

submitted regulations revise Indiana's ambient air quality standards for ozone and particulate matter to be consistent with EPA's 2008 ozone and 2012 fine particulate matter National Ambient Air Quality Standards. EPA is therefore approving these SIP revisions in accordance with the requirements of the Clean Air Act. In the Final Rules section of this **Federal Register**, EPA is approving the State'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 action, 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.

DATES: Comments must be received on or before January 20, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0661, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance 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: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State'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: December 5, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–29587 Filed 12–17–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

World Trade Center Health Program; Petition 006—Primary Biliary Cirrhosis; Finding of Insufficient Evidence

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Denial of petition for addition of a health condition.

SUMMARY: On October 20, 2014, the Administrator of the World Trade Center (WTC) Health Program received a petition to add primary biliary cirrhosis (Petition 006) to the List of WTC-Related Health Conditions (List). The Administrator has not found sufficient scientific evidence to conduct an analysis of whether to add primary biliary cirrhosis to the List. Accordingly, the Administrator finds that insufficient evidence exists to request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC), to publish a proposed rule, or to publish a determination not to publish a proposed rule.

DATES: The Administrator of the WTC Health Program is denying this petition for the addition of a health condition as of December 18, 2014.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Ave., MS: C–46, Cincinnati, OH 45226; telephone (855)818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov*.

SUPPLEMENTARY INFORMATION:

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), amended the Public Health Service Act (PHS Act) to add Title XXXIII [1] establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

All references to the Administrator of the WTC Health Program (Administrator) in this notice mean the Director of the National Institute for Occupational Safety and Health (NIOSH) or his or her designee.

Pursuant to section 3312(a)(6)(B) of the PHS Act, interested parties may petition the Administrator to add a health condition to the List in 42 CFR 88.1. Within 60 calendar days after receipt of a petition to add a condition to the List, the Administrator must take one of the following four actions described in section 3312(a)(6)(B) and 42 CFR 88.17: (i) Request a recommendation of the STAC; (ii) publish a proposed rule in the **Federal Register** to add such health condition; (iii) publish in the **Federal Register** the Administrator's determination not to

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–61. Those portions of the Zadroga Act found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

publish such a proposed rule and the basis for such determination; or (iv) publish in the **Federal Register** a determination that insufficient evidence exists to take action under (i) through (iii) above.

B. Petition 006

On October 20, 2014, the Administrator received a petition to add primary biliary cirrhosis to the List (Petition 006).[2] The petition was submitted by a Salvation Army responder who worked at Ground Zero in the aftermath of the September 11, 2001, terrorist attacks. The petitioner stated that she had been diagnosed with primary biliary cirrhosis and shared letters from her personal physicians confirming the diagnosis. The petition offered as evidence a number of articles identifying potential associations between primary biliary cirrhosis and other autoimmune diseases to various environmental exposures, including polycyclic aromatic hydrocarbons, xenobiotics, asbestos, and silicon.[3]

C. Administrator's Determination on Petition 006

The Administrator has established a methodology for evaluating whether to add non-cancer health conditions to the List of WTC-Related Health Conditions.[4] First, the Administrator determines whether published, peer-reviewed studies about the health condition among 9/11-exposed populations are available to assess evidence for a causal relationship and provide a basis for a decision on whether to add the condition to the List. If the studies provide sufficient evidence for analysis, the Administrator proceeds with an assessment of the information. A health condition may be added to the List if published, peer-reviewed direct observational or epidemiologic studies provide substantial support[5] for a causal relationship between 9/11 exposures and the health condition in 9/11-exposed populations. If only epidemiologic studies are available and they provide only modest support[6] for a causal relationship between 9/11 exposures and the health condition, the Administrator may then evaluate studies of associations between the health condition and 9/11 agents.[7] If that additional assessment establishes substantial support for a causal relationship between a 9/11 agent or agents and the health condition, the health condition may be added to the List.

In accordance with section 3312(a)(6)(B) of the PHS Act and 42 CFR 88.17, described above, the Administrator has reviewed the evidence presented in Petition 006. None of the articles presented with the petition provide sufficient evidence of a causal relationship between primary biliary cirrhosis and 9/11 exposures to establish a basis for a decision on whether to add primary biliary cirrhosis to the List. Although some of the articles identify potential associations between specific 9/11 agents and primary biliary cirrhosis or autoimmune disease in general, none of the articles are peer-reviewed direct observational or epidemiologic studies of 9/11 populations, as required by the methodology described above.

In addition to reviewing the evidence provided in Petition 006, the Administrator also conducted a search of the existing scientific/medical literature for evidence that could establish a causal relationship between 9/11 exposures and primary biliary cirrhosis. He did not find any peer-reviewed, published direct observational or epidemiologic studies of 9/11-exposed populations which would support such a relationship.

Because neither the evidence submitted by the Petitioner nor a search of published scientific/medical literature provided information regarding the occurrence of primary biliary cirrhosis among 9/11-exposed populations, the Administrator has determined that requesting a recommendation from the STAC (pursuant to PHS Act, section 3312(a)(6)(B)(i) and 42 CFR 88.17(a)(2)(i)) is unwarranted. In prior actions, the Administrator requested a recommendation from the STAC when he determined that it would assist his evaluation; such as when, for example, the Administrator is in need of an interpretation of conflicting or inconclusive published scientific evidence.

Similarly, the Administrator has determined that insufficient evidence exists to take further action, including either proposing the addition of primary biliary cirrhosis to the List (pursuant to PHS Act, section 3312(a)(6)(B)(ii) and 42 CFR 88.17(a)(2)(ii)) or publishing a determination not to publish a proposed rule in the **Federal Register** (pursuant to PHS Act, section 3312(a)(6)(B)(iii) and 42 CFR 88.17(a)(2)(iii)). In order to publish such a proposed addition or a determination not to propose a rule, the Administrator would first need to find that enough scientific evidence is available to analyze whether 9/11 exposures are associated with the health condition. Since the Administrator is unable to identify sufficient evidence to conduct an analysis of whether to add the health condition, the Administrator (pursuant to PHS Act, section 3312(a)(6)(B)(iv) and 42 CFR 88.17(a)(2)(iv)) is publishing a determination that he cannot take any of the other statutory and regulatory actions.

For the reasons discussed above, the request made in Petition 006 to add primary biliary cirrhosis to the List of WTC-Related Health Conditions is denied.

Dated: December 10, 2014.

John Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2014–29647 Filed 12–17–14; 8:45 am]

BILLING CODE 4163–18–P

[2] See Petition 006. WTC Health Program: Petitions Received. *http://www.cdc.gov/wtc/received.html.*

[3] Smyk D, Mytilinaiou MG, Rigopoulou EI, Bogdanos DP [2010]. PBC triggers in water reservoirs, coal mining areas and waste disposal sites: from Newcastle to New York. *Disease Markers* 29:337–344; Pleil JD, Vette AF, Johnson BA, Rappaport SM [2004]. Air levels of carcinogenic polycyclic aromatic hydrocarbons after the World Trade Center disaster. *PNAS* 101(32):11685–11688; Dronamraju D, Odin J, Bach N [2010]. Primary biliary cirrhosis: environmental risk factors. *Disease Markers* 29:323–328; Selmi C, De Santis M, Cavaciocchi F, Gershwin ME [2010]. Infectious agents and xenobiotics in the etiology of primary biliary cirrhosis. *Disease Markers* 29:287–299; September 11th Worker Protection Task Force. Interim Report. March 4, 2008; Walsh N [2014]. Asbestos revisited: a new autoimmune disease? *MedPage Today* at *http://www.medpagetoday.com/Rheumatology/GeneralRheumatology/46972*; Speck-Hernandez CA and Montoya-Ortiz G [2012]. Silicon, a possible link between environmental exposure and autoimmune diseases: the case of rheumatoid arthritis. *Arthritis* at *http://dx.doi.org/10.1155/2012/604187.*

[4] This methodology, ''Policy and Procedures for Adding Non-Cancer Conditions to the List of WTC-Related Health Conditions,'' revised October 21, 2014, is available on the WTC Health Program Web site, at *http://www.cdc.gov/wtc/policies.html.*

[5] The substantial evidence standard is met when the Program assesses all of the available, relevant information and determines with high confidence that the evidence supports its findings regarding a causal association between the 9/11 exposure(s) and the health condition.

[6] The modest evidence standard is met when the Program assesses all of the available, relevant information and determines with moderate confidence that the evidence supports its findings regarding a causal association between the 9/11 exposure(s) and the health condition.

[7] 9/11 agents are chemical, physical, biological, or other agents or hazards reported in a published, peer-reviewed exposure assessment study of responders or survivors who were present in either the New York City disaster area, the Pentagon site, or in Shanksville, Pennsylvania site as defined in 42 CFR part 88.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[RM–11395, GN Docket No. 12–268, WT Docket Nos. 14–170, 05–211; DA 14–1784]

Updating Competitive Bidding Rules; Extension of Comment and Reply Comment Periods

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; extension of comment and reply comment deadlines.

SUMMARY: The Wireless Telecommunications Bureau extends the deadline for filing comments and reply comments on its *Competitive Bidding Notice of Proposed Rulemaking* (*Competitive Bidding NPRM*), which sought comment on the revision of certain part 1 competitive bidding rules and provided notice of the Commission's intention to resolve longstanding petitions for reconsideration.

DATES: Comments are due on or before January 23, 2015, and reply comments are due on or before February 12, 2015.

ADDRESSES: You may submit comments to the *Competitive Bidding NPRM,* identified by GN Docket No. 12–268 and WT Docket Nos. 14–170, 05–211, by any of the following methods:

- *Electronic Filers:* Federal Communication Commission's Electronic Comments Filing System (ECFS): *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, or audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: Leslie Barnes at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau's Order (*Order*) in GN Docket No. 12–268, DA 14–1784, adopted and released on December 8, 2014. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), telephone 202–488–5300, facsimile 202–488–5563, or by contacting BCPI on its Web site: *http://www.BCPIWEB.com.* The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

Summary

The Wireless Telecommunications Bureau (Bureau) released an *Order* on December 8, 2014, which extends the comment and reply comment filing deadlines established in the *Competitive Bidding NPRM,* 79 FR 68172, November 14, 2014. The Federal Communications Commission (Commission) adopted the *Competitive Bidding NPRM* on October 1, 2014, proposing to reform certain of its general part 1 rules governing competitive bidding for spectrum licenses to reflect changes in the marketplace. The Commission expressed its intention to act on the issues raised in the *Competitive Bidding NPRM* in time to allow all parties to account for any changes while planning for the broadcast incentive auction. Extending the deadlines for comments and reply comments in response to the *Competitive Bidding NPRM* will increase the likelihood that interested parties will be able to take into account more complete information about the results of the bidding in Auction 97 and thereby promote a more comprehensive record in the proceeding, without jeopardizing the Bureau's ability to act on the *Competitive Bidding NPRM* sufficiently in advance of the upcoming broadcast incentive auction. Pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act of 1934, as amended, and pursuant to the authority delegated in 47 CFR 0.131 and 0.331, the Bureau extends the deadlines for filing comments and reply comments until January 23, 2015, and February 12, 2015.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2014–29590 Filed 12–17–14; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 79, No. 243
Thursday, December 18, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 *et. seq.*), the National Forest Management Act of 1976 (16 U.S.C. 1612), and the Federal Public Lands Recreation Enhancement Act (Pub. L. 108–447). Additional information concerning the Board, including the meeting summary/minutes, can be found by visiting the Board's Web site at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

DATES: The meeting will be held Wednesday, January 7, 2015 at 1:00 p.m.

All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 South Highway 16, Rapid City, South Dakota. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–673–9216, or by email at *sjjacobson@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.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide:

(1) Annual Ethics Training;

(2) Orientation Topic: Cultural Resources/Antiquities Act;

(3) Recreation Facilities Working Group Update with possible recommendation;

(4) Winter Sports Travel Planning Strategy—Appoint working group;

(5) FY 16 MPB Restoration Priority Areas.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by December 29, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Board may file written statements with the Board's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208.

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: December 12, 2014.

Ericka Luna,

Acting Deputy Forest Supervisor.

[FR Doc. 2014–29650 Filed 12–17–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council (Council) will meet in Washington, DC The Council is authorized under Section 9 of the Cooperative Forestry Assistance Act, as amended by Title XII, Section 1219 of Public Law 101–624 (the Act) (16 U.S.C. 2105g) and the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II). Additional information concerning the Council, can be found by visiting the Council's Web site at: *http://www.fs.fed.us/ucf/nucfac.shtml.* The meeting is open to the public.

DATES: The meetings will be held on the following dates:

- Wednesday, January 28, 2015 from 9:00 a.m.–5:00 p.m. (EST)
- Thursday, January 29, 2015 from 9:00 a.m.–12:00 p.m. (EST), or until Council business is completed.

All meetings are subject to cancellation. For updated status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Forest Service Headquarters, Yates Building, 201 14th Street SW., Pinchot Room-Second Floor, Washington, DC 20250. 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 Forest Service. Visitors are encouraged to call ahead to facilitate entry into the Forest Service building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, Yates Building (3NW), 201 14th Street SW., Washington, DC 20250; or by cell phone at 202–309–9873. 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.

SUPPLEMENTARY INFORMATION: The agenda for this meeting is:

(1) Provide orientation for new members,

(2) Meet with the facilitator for the development of the next National Urban Forestry Ten Year Action Plan,

(3) Finalize the work plan action items,

(4) Discuss and approve the 2016 grant categories,

(5) Receive information from members of the urban forestry community of practice,

(6) Receive Forest Service updates on program activities, partnerships, and budgets, and

(7) Discuss the annual accomplishments and recommendations report.

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 January 21, 2015 to be scheduled on the agenda. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Written comments and time request for oral comments must be sent to Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, Yates Building (3SC), 201 14th Street SW., Washington, DC 20250; by email to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792. Summary/minutes of the meeting will be posted on the following Web site: *http://www.fs.fed.us/ucf/nucfac.shtml* within 45 days after the meeting.

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: December 11, 2014.

Patti Hirami,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2014–29671 Filed 12–17–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–86–2014]

Foreign-Trade Zone (FTZ) 57—Charlotte, North Carolina Notification of Proposed Export Production Activity Gildan Yarns, LLC (Cotton, Cotton/Polyester Yarns) Salisbury, North Carolina

The Charlotte Regional Partnership, Inc., grantee of FTZ 57, submitted a notification of proposed export production activity to the FTZ Board on behalf of Gildan Yarns, LLC (Gildan), located in Salisbury, North Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on December 8, 2014.

The Gildan facility is located within Site 19 of FTZ 57. The activity at the facility would involve the production of spun cotton and cotton/polyester yarns for export (no shipments for U.S. consumption would occur). Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Gildan from customs duty payments on the foreign status material used in export production. The sole foreign-origin material to be used in the export production is polyester staple fiber (duty rate: 4.3%). Customs duties also could possibly be deferred or reduced on foreign status production equipment or the foreign material scrapped or destroyed under U.S. Customs and Border Protection procedures.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 27, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: December 12, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–29670 Filed 12–17–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Application for Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 17, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230. Phone: 202–482–5131. Email: *etca@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III of the Export Trading Company Act (hereinafter ''the Act'') of 1982 (Pub. L. 97–290, 15 U.S.C. 4001 *et seq.*), authorizes the Secretary of Commerce to issue, with the concurrence of the Attorney General, an Export Trade Certificate of Review to any person that establishes that its proposed export trade, export trade activities, and methods of operation meet the four standards found in Section 303(a) of the Act, 15 U.S.C. 4001 *et seq.* An Export Trade Certificate of Review provides the certificate holder and its members with limited antitrust immunity for specified export-related activities. Application for an Export Trade Certificate of Review is voluntary.

The information to be collected is found at 15 CFR part 325.3—Export Trade Certificates of Review. The collection of information is necessary for both the Departments of Commerce and Justice to conduct an analysis, in order to determine whether the applicant and its members are eligible to receive the protection of an Export Trade Certificate of Review and whether the applicant's proposed export-related conduct meets the standards in Section 303(a) of the Act. The collection of information constitutes the essential basis of the statutory determinations to be made by the Secretary of Commerce and the Attorney General.

The Department of Commerce conducts its economic and legal analysis of the information supplied by applicants through the Office of Trade and Economic Analysis and the Office of the General Counsel. In the Department of Justice, analysis is conducted by the Antitrust Division.

Title III was enacted to reduce uncertainty regarding the application of U.S. antitrust laws to export activities. An Export Trade Certificate of Review provides its holder and members named in the Certificate with (a) protection from government actions under state and federal antitrust laws for the export conduct specified in the Certificate, and (b) certain protection from private suits, by limiting liability in private actions to actual damages when the challenged activities are covered by an Export Trade Certificate of Review.

II. Method of Collection

The form is sent by request to U.S. firms.

III. Data

OMB Control Number: 0625–0125.
Form Number(s): ITA–4093P.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations; not-for-profit institutions, and state, local or tribal government.
Estimated Number of Respondents: 9.
Estimated Time per Response: 32 hours (application); 2 hours (annual report).
Estimated Total Annual Burden Hours: 440 hours.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 12, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–29603 Filed 12–17–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 12, 2014, the Department of Commerce (the ''Department'') published the *Preliminary Results* of the 2013–2014 administrative review on certain frozen warmwater shrimp (''shrimp'') from the People's Republic of China (''PRC''), covering the period of review (''POR'') from February 1, 2013, through January 31, 2014.[1] We gave interested parties an opportunity to submit comments on the *Preliminary Results,* but none were received. Therefore, these final results are unchanged from the *Preliminary Results,* and we continue to find that Shantou Yuexing Enterprise Company (''SYEC''), and Zhanjiang Regal Integrated Marine Resources Co., Ltd. (''Regal'') did not have reviewable entries during this POR. Additionally, we continue to find that Rizhao Smart Foods Co., Ltd. (''Smart Foods'') is not eligible for a separate rate, and we will continue to treat it as part of the PRC-wide entity.

DATES: *Effective Date:* December 18, 2014.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, 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) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2014, the Department published the *Preliminary Results* of this administrative review. SYEC, Smart Foods, and Regal [2] submitted ''no shipment certifications'' to the Department.[3] In response to the Department's query, U.S. Customs and Border Protection (''CBP'') did not provide any evidence that contradicted SYEC or Regal's claims of no shipments. The Department received no comments from interested parties concerning the results of the CBP queries. Therefore, based on SYEC and Regal's certifications and our analysis of CBP information, we preliminarily determined that SYEC and Regal did not have any reviewable entries during the POR.[4] With regard to Smart Foods, we noted that because it was previously found to be part of the PRC-wide entity, and continues to be part of the PRC-wide entity for this review, we were not making a determination regarding its no shipments certification.[5] In the *Preliminary Results* we determined that 58 companies in total should be treated as part of the PRC-wide entity.[6] We invited interested parties to comment on the *Preliminary Results.* We received no comments from interested parties.

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by

[1] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 79 FR 54678 (September 12, 2014) (''*Preliminary Results*'').

[2] In the *Initiation Notice,* we stated that because the order was revoked with respect to subject merchandise produced and exported by Regal, this administrative review covers all subject merchandise exported by Regal and manufactured by any company other than Regal. *See Initiation Notice* 79 FR at 18275 at footnote 5.

[3] *See* Letter to the Secretary of Commerce from Shantou Yuexing ''Shantou Yuexing Enterprise Company's Request for rescinding an Administrative Review'' (April 2, 2014); Letter to the Secretary of Commerce from Rizhao Smart Foods Co., Ltd. ''Certificate of No Sales'' (April 9, 2014); Letter to the Secretary of Commerce from Zhanjiang Regal Integrated Marine Resources Co., Ltd. ''No Shipments Statement of Zhanjiang Regal Integrated Marine Resources Co., Ltd.'' (June 2, 2014).

[4] *See Preliminary Results,* 79 FR at 54679.

[5] *Id.*

[6] *Id.*

aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[7] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

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

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

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

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; [8] (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.21.1030, and 1605.29.1010. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of these orders is dispositive.[9]

Final Determination of No Shipments

In the *Preliminary Results,* the Department determined that Regal and SYEC had no sales of subject merchandise to the United States during the POR.[10] We stated, consistent with the recently announced refinement to its assessment practice in non-market economy (''NME'') cases, that the Department would not rescind the review in these circumstances but, rather, would complete the review with respect to Regal and SYEC and issue appropriate instructions to CBP based on the final results of the review. As stated above, we did not receive any comments on our *Preliminary Results* nor did we receive information from CBP indicating that there were reviewable transactions for Regal or SYEC during the POR. Therefore, we continue to determine that Regal and SYEC had no reviewable transactions of subject merchandise during the POR. Consistent with our ''automatic assessment'' clarification, the Department will issue appropriate instructions to CBP based on our final results.[11]

PRC-Wide Entity

Because Smart Foods was found to be part of the PRC-wide entity in recent administrative reviews of the *Order,*[12] had no reviewable sales or entries in this review, and, consequently, did not demonstrate eligibility for a separate rate, Smart Foods continues to be part of the PRC-wide entity. Therefore, we continue to find that 58 companies, including Smart Foods, should be treated as part of the PRC-wide entity. The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[13] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate is not subject to change. The Department finds that 58 companies [14] under review have

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

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

[9] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the CIT decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010), and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011) (''*Order*''); *see also Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011.

[10] *See Preliminary Results,* 79 FR at 54679.

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement*''). *See also* the ''Assessment'' section of this notice, below.

[12] *See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 77 FR 53856 (September 4, 2012) at Appendix II; *see also Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011–2012,* 78 FR 56209 (September 12, 2013).

[13] *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[14] Those companies for which a review was requested and which we determine are part of the PRC-wide entity include: Asian Seafoods (Zhanjiang) Co., Ltd., Beihai Angbang Seafood Co., Ltd., Beihai Boston Frozen Food Co., Ltd., Dalian Shanhai Seafood Co., Ltd., Dalian Taiyang Aquatic Products Co., Ltd., Eimskip Logistics (Qingdao) Co., Ltd., EZ Logistics Inc., EZ Logistics LLC (Qingdao Branch), Fujian Chaohui International Trading, Fujian Rongjiang Import and Export Co., Ltd., Fujian Tea Import & Export Co., Ltd., Fujian Zhaoan Haili Aquatic Co., Ltd., Fuqing Dongwei Aquatic Products Ind., Fuqing Minhua Trade Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Guangdong Foodstuffs Import & Export (Group) Corporation, Guangdong Gourmet Aquatic Products Co., Ltd., Guangdong Jinhang Food Co., Ltd., Guangdong Jinhang Foods Co., Ltd., Guangdong Wanshida Holding Corp., Guangdong Wanya Foods Fty. Co.,

not established eligibility for a separate rate and, thus, they should continue to be part of the PRC-wide entity for these final results.

Assessment Rates

Upon issuance of the final results, the Department will determine, and 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 recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will 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.[15]

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 that are not listed in footnote 14, 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 (including the firms listed in footnote 14), the cash deposit rate will be the existing rate 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.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: December 12, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–29673 Filed 12–17–14; 8:45 am]

BILLING CODE 3510–DS–P

Ltd., Guangzhou Shi Runjin Trading Development Co., Ltd., Haida Seafood Co., Ltd., HaiLi Aquatic Product Co., Ltd., Hainan Brich Aquatic Products Co., Ltd., Hua Yang (Dalian), International Transportation Service Co., Huazhou XinHai Aquatic Products Co. Ltd., Jiazhou Foods Industry Co., Ltd., Longhai Gelin Foods Co., Ltd., Longhai Gelin Seafoods Co., Ltd., Maoming Xinzhou Seafood Co., Ltd., North Seafood Group Co., Panwin International Logistics Co., Ltd., Pingye Foreign Transportation Corp. Ltd of Shantou, SE.Z., Rizhao Smart Foods Company Limited, Savvy Seafood Inc., Shanghai Lingpu Aquatic Products Co., Ltd., Shanghai Smiling Food Co., Ltd.. Shantou Freezing Aquatic Product Foodstuffs Co., Shantou Jiazhou Food Industrial Co., Ltd., Shantou Jin Cheng Food Co., Ltd., Shantou Jintai Aquatic Product Industrial Co., Ltd., Shantou Li An Plastic Products Co. Ltd., Shantou Longsheng Aquatic Product Foodstuff Co., Ltd., Shantou Wanya Foods Fty. Co., Ltd., Thai Royal Frozen Food Zhanjiang Co., Ltd., Yangjiang Anyang Food Co., Ltd., Yangjiang City Haida Seafood Company Ltd., Yangjiang City Hongwai Seafood Company, Ltd., Zhangzhou Xinwanya Aquatic Product Co., Ltd., Zhangzhou Yanfeng Aquatic Product, Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd., Zhanjiang Fuchang Aquatic Products Co., Ltd., Zhanjiang Jinguo Marine Foods Co., Ltd., Zhanjiang Longwei Aquatic Products Industry Co., Ltd., Zhanjiang Universal Seafood Corp., Zhanjiang Newpro Foods Co., Ltd., Zhaoan Yangli Aquatic Co., Ltd.

[15] *See Assessment Practice Refinement,* 76 FR at 65694.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 6, 2014, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review and new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (the PRC).[1] The period of review (POR) for the administrative review is September 1, 2012, through August 31, 2013, and the POR for the new shipper review is September 1, 2012 through August 31, 2013. These reviews cover two producers/exporters of subject merchandise: Xiping Opeck Food Co., Ltd. (Xiping Opeck), and Hubei Nature Agriculture Industry Co., Ltd (Hubei Nature). We invited parties to comment on the *Preliminary Results.* We received no comments from interested parties. Accordingly, for the final results, we continue to find that the companies covered by these reviews did not make sales of subject merchandise at less than normal value.

DATES: *Effective Date:* December 18, 2014.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–3477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2014, the Department published the *Preliminary Results* of

[1] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2012–2013,* 79 FR 60134 (October 6, 2014) (*Preliminary Results*). Also, on January 6, 2014, in accordance with 19 CFR 351.214(j)(3), the Department aligned the new shipper review with the administrative review. *See* Memorandum to the File from Bryan Hansen, Case Analyst, ''Alignment of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China with the concurrent administrative review of Freshwater Crawfish Tail Meat from the People's Republic of China,'' dated January 6, 2014.

these reviews. The Department gave interested parties an opportunity to comment on the *Preliminary Results.* We received no comments from interested parties.

We conducted these reviews in accordance with sections 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un-purged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.1010 and 1605.40.1090, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by CBP in 2000, and HTSUS numbers 0306.19.0010 and 0306.29.0000, which are reserved for fish and crustaceans in general. On February 10, 2012, the Department added HTSUS classification number 0306.29.0100 to the scope description pursuant to a request by U.S. Customs and Border Protection (CBP). The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Final Results of the Review

The Department made no changes to its calculations announced in the *Preliminary Results.* As a result of our administrative review, we determine that a weighted-average dumping margin of 0.00 percent exists for Xiping Opeck for the POR.

For the final results of the new shipper review, the Department determines that a dumping margin of 0.00 percent exists for merchandise produced and exported by Hubei Nature for the POR.

Assessment

In accordance with 19 CFR 351.212 and the *Final Modification,*[2] the Department will instruct CBP to liquidate all appropriate entries for Xiping Opeck, and Hubei Nature without regard to antidumping duties because their weighted-average dumping margins in these final results are zero.[3]

Pursuant to the Department's refinement to its assessment practice in NME cases,[4] for entries that were not reported in the U.S. sales databases submitted by companies individually examined during these reviews, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.

We intend to issue assessment instructions to CBP 15 days after the date of publication of these final results of reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Xiping Opeck, the cash deposit rate will be the rate established in the final results of the administrative review; because the rate is zero or *de minimis,* no cash deposit will be required for that Xiping Opeck; (2) for previously investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the investigation; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 223.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC entity that supplied that non-PRC exporter.

With respect to Hubei Nature, the respondent in the new shipper review, the Department established a combination cash deposit rate for this company consistent with its practice as follows: (1) For subject merchandise produced and exported by Hubei Nature, the cash deposit rate will be the rate established for Hubei Nature in the final results of the new shipper review; (2) for subject merchandise exported by Hubei Nature, but not produced by Hubei Nature, the cash deposit rate will be the rate for the PRC-wide entity; and (3) for subject merchandise produced by Hubei Nature but not exported by Hubei Nature, the cash deposit rate will be the rate applicable to the exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of reviews are issued and published in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), 777(i) of the Act and 19 CFR 351.213(h), 351.214 and 351.221(b)(4).

Dated: December 12, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–29660 Filed 12–17–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* 19 CFR 351.212(b)(1).

[3] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[4] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD652

Recommendations of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud

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

ACTION: Notice; request for comments.

SUMMARY: On June 17, 2014, the White House released a *Presidential Memorandum* entitled ''Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.'' Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of State and Commerce with twelve other Federal agency members: the Council on Environmental Quality, Departments of Agriculture, Defense, Health and Human Services, Homeland Security, Interior, Justice, the Federal Trade Commission, the Office of Management and Budget, the Office of Science and Technology Policy, the U.S. Agency for International Development, the National Security Council and the U.S. Trade Representative. The Task Force is directed to report to the President within 180 days with ''recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need.'' Those recommendations have now been provided to the President through the National Ocean Council. This is a request for comments from the public to advise the Task Force on how to most effectively implement these recommendations. Specific questions are posed after some of the recommendations to help elicit feedback on potential implementation issues and concerns which will help inform development of an implementation plan in the months ahead.

DATES: Comments must be received by January 20, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0090, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Carrie Selberg, 1315 East-West Highway; Silver Spring, Maryland 20910.

Instructions: 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 Task Force. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. The Task Force will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Carrie Selberg, (301) 427–8021.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a global leader in sustainable seafood. Over the course of the last six years, the United States has largely ended overfishing in federally managed waters and successfully rebuilt a record number of overfished stocks, with both overfishing and overfished fish stocks at all-time lows. Effective management and enforcement of domestic fishing regulations has supported near record highs in both landings and revenue for our domestic fishing industries. As a result, the United States' approach of science-based fisheries management is recognized internationally as a model for ending overfishing and implementing sustainable fisheries management practices.

One of the biggest global threats to the sustainable management of the world's fisheries is illegal, unreported, and unregulated (IUU) fishing. IUU fishing occurs both within nations' waters and on the high seas and undermines the biological and economic sustainability of fisheries both domestically and abroad. IUU fishing in other parts of the world can cause problems in places where there are strong rules managing fisheries, such as the United States. By circumventing conservation and management measures and cutting or avoiding the operational costs associated with sustainable fishing practices and harvesting levels, entities engaged in IUU fishing undermine the sustainability of fish stocks and the broader ecosystem. Further, IUU fishers gain an unfair advantage in the marketplace over law-abiding fishing operations as they do not pay the true cost of sustainable production. Global losses attributable to IUU fishing have been estimated to be between $10–23 billion annually. Additionally, U.S. efforts to reduce global hunger, malnutrition, and coastal risks are being undermined by IUU fishing in developing countries. Over 2.5 billion people depend upon fish for food and nutrition, and IUU and unsustainable fishing threatens valuable food resources. Combating IUU fishing will directly contribute to U.S. commitments and efforts to enhance global food and nutrition security.

A number of factors including complex trade systems, comingling, and broad geographic distribution contribute to difficulties in documenting the chain of custody for fish and seafood products. According to the United Nations' Food and Agriculture Organization, fish and seafood products are among the most widely traded food commodities in the world. Additionally, some seafood is comingled in the global supply chain as part of processing and distribution. Once a shipment of seafood enters U.S. commerce, it is often distributed widely making it difficult to document the chain of custody and guarantee that the product reaching the consumer has been legally harvested or is in fact the product it is claimed to be.

While not necessarily related to IUU fishing, seafood fraud (whereby fish is mislabeled with respect to its species or country of origin, quantity, or quality) has the potential to undermine the economic viability of U.S. and global fisheries as well as the ability of consumers to make informed purchasing choices. Seafood fraud can occur at any point along the seafood supply chain from harvest to market. It can be driven by diverse motives, from covering up IUU fishing to avoiding duties, to increasing a profit margin through species substitution or falsification of the country of origin. While it is difficult to know the extent of seafood fraud, the frequency of seafood fraud incidents has received increasing attention in peer-reviewed journals, government reports and private sector reports. Seafood fraud threatens consumer confidence, serving to further undermine the reputation and market competitiveness of law-abiding fishers and businesses in the seafood industry.

A number of challenges exist with respect to information collection, sharing, and analysis in support of federal efforts to combat IUU fishing and seafood fraud: (1) A vast industry with a large quantity of international and domestic trade; (2) multiple Federal agencies responsible for regulating only a part of this trade and only for particular issues (*e.g.,* food labeling and fishing violations); (3) disparate information collection abilities and requirements among those agencies with no specific common collection, analysis or sharing mechanism; (4) federal jurisdiction not including the entire

supply chain as states manage their own fisheries and generally have primary jurisdiction over intrastate sales, including most retail and restaurant sales; (5) statutory constraints on the use and sharing of some information collected by the federal government; and (6) weak institutions and poor data collection and management in some source countries.

It is in the interest of the United States to promote a comprehensive framework that supports sustainable fishing practices while combating seafood fraud and the sale of IUU seafood, including by improving the transparency and traceability of the seafood supply chain. To achieve these objectives, the United States will need to improve implementation of and enhance and broaden the tools it has available to combat IUU fishing and seafood fraud. The Task Force was established to identify and achieve these objectives.

The Task Force initiated a public engagement process to gain broad input to inform and advise development of these recommendations. This process included two public meetings, two webinars, input from 32 countries, and a public comment period noticed in the **Federal Register**. The Task Force also began to analyze the federal government's existing authorities to combat IUU fishing and seafood fraud, and identify potential gaps in those authorities. Furthermore, it examined specific areas for improved coordination among the Task Force agencies regarding these issues.

Based on this public engagement process and the Task Force's analysis of existing authorities, gaps in those authorities, and current and potential levels of interagency coordination, the Task Force developed recommendations designed to enhance the tools we have available to combat IUU fishing and seafood fraud. Doing so will level the playing field for legitimate fishers and businesses in the seafood industry and increase consumer confidence in seafood sold in the United States.

Recommendations by the Task Force fall under four general themes:

- International: Combat IUU fishing and seafood fraud at the international level;
- Enforcement: Strengthen enforcement and enhance enforcement tools to combat IUU fishing and seafood fraud;
- Partnerships: Create and expand partnerships with state and local governments, industry, and non-governmental organizations to identify and eliminate seafood fraud and the sale of IUU seafood in U.S. commerce; and
- Traceability: Create a risk-based traceability program to track seafood from harvest to entry into U.S. commerce to prevent entry of illegal product into the supply chain and better inform retailers and consumers.

II. Recommendations

Comment is generally sought on how to implement the following recommendations. Specific questions intended to elicit comment are listed below some of the recommendations. Proposed timeframes have been specified in some of the recommendations discussed below.

International: Combat IUU fishing and seafood fraud at the international level

1. The 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) is the first binding global instrument focused specifically on combating IUU fishing. The PSMA sets minimum standards for the conduct of port inspections and the training of inspectors to prevent IUU seafood products from entering commercial markets. The PSMA also requires port States to prevent entry into or use of ports by vessels that have engaged in IUU fishing, except for the purpose of inspection or other enforcement actions. The PSMA requires 25 ratifications to enter into force; to date there are 11. The U.S. Senate provided its advice and consent to ratification of the PSMA in 2014. Before the United States can deposit its instrument of ratification, however, Congress must pass legislation to implement U.S. obligations under the PSMA. Recommendation: Work with Congress to pass implementing legislation for the Port State Measures Agreement (PSMA). Direct the Secretary of State to promote entry into force and full implementation of the PSMA.

2. Many fisheries that exist in the waters of several nations and/or on the high seas are managed by Regional Fisheries Management Organizations (RFMOs). RFMOs have sought to promote compliance with the management measures they have adopted using a wide variety of tools. Drawing on experience gained from participation in various RFMOs, the United States is in a position to identify the best practices for combating IUU fishing through RFMOs and promote the adoption of such practices in all RFMOs in which the United States participates. Some examples include:

(A) Several RFMOs, including the International Commission for the Conservation of Atlantic Tunas and the Commission for the Conservation of Antarctic Marine Living Resources, have developed catch documentation and trade tracking requirements that enable governments to monitor the movement of fish and fish products through international commerce. The United States should develop, in collaboration with RFMOs, foreign governments, and other intergovernmental organizations, best practices for electronic systems that collect catch information and that track data across harvest and transport vessels and fisheries management agencies—these should include uniform data elements such as harvest vessel, species name, gear type, and region of catch. Best practices should also include interoperability among U.S. domestic and foreign national-level documentation and data tracking systems, with a view to avoiding duplication with existing systems.

(B) Article 21 of the 1995 United Nations Fish Stocks Agreement (UNFSA) establishes a reciprocal high seas boarding and inspection regime that is a critical tool for greater cooperation in enforcement of RFMO-adopted conservation and management measures. Under this regime, any UNFSA Party, including the United States, that is a member of an RFMO can board and inspect the fishing vessels of any other UNFSA Party in high seas areas covered by and subject to measures adopted by that RFMO, collect information on any apparent violations of applicable fisheries management measures, and provide this information to the flag State or relevant RFMOs for follow-up action. To date only the Western and Central Pacific Fisheries Commission (WCPFC) has implemented measures to the full extent outlined in UNFSA. The United States should continue to call upon additional RFMOs to which it is a party to follow the lead of the WCPFC, putting particular pressure on other UNFSA parties to support such efforts, reminding them of their obligations under the UNFSA, while reserving the right of the United States to use its authority deriving from UNSA to conduct high seas boardings and inspections.

(C) Many RFMOs require vessels above a minimum size to carry satellite-based vessel monitor systems (VMS) that enable at least the flag States to monitor the position of vessels at sea on a real-time basis. The United States should develop, in collaboration with RFMOs, foreign governments, and other intergovernmental organizations, best practices for implementation of vessel monitoring systems across all types of commercial fishing vessels and those vessels engaged in the fisheries supply chain (including transshipment and

processing vessels). The United States should also seek expansion of international vessel-tracking requirements to include, where appropriate, the use of Automatic Identification System (AIS), VMS, innovative and low-cost technology suitable for small vessels, and updated technical standards to improve reporting frequency and accessibility of vessel position data.

(D) The United Nations Food and Agriculture Organization (FAO) has been working to develop a Global Record of Fishing Vessels and Fishing Support Vessels. The United States should continue to support the FAO's design and implementation of Phase One of the Global Record of Fishing Vessels (vessels greater than or equal to 100GT, 100GRT, or 24m) to ensure that implementation is accomplished as soon as possible. At the same time, the United States should continue to advance measures in the RFMOs to require International Maritime Organization (IMO) numbers for all eligible vessels, and to work with the IMO and other relevant organization to expand the category of commercial vessels that are eligible for IMO numbers, to ensure that all commercial fishing vessels can be tracked even as they change owners, flags, or names.

Recommendation: Direct the Task Force to develop, within one year (and refined as appropriate in subsequent years), best practices for catch documentation and data tracking; high seas boarding and inspection; monitoring, control, and surveillance measures (including observer programs, vessel tracking systems, authorized vessel lists); port state control; and compliance monitoring and promote their adoption in each of the Regional Fishery Management Organizations (RFMOs) of which the U.S. is a member.

Question: Are there any categories of best practices to be developed by the U.S. government missing from the list above?

3. Various U.S. government agencies are engaged in initiatives with foreign governments to support broader maritime domain awareness such as regional law enforcement activities to counter trafficking of people, drugs or weapons. IUU fishing should be included in these activities to capitalize upon current efforts and resources and foster comprehensive maritime domain awareness. Recommendation: Direct the Secretaries of Defense and Homeland Security to include IUU fishing threat analysis and monitoring as a component of U.S. and international efforts to increase overall maritime domain awareness.

Question: What regions or fisheries should be prioritized for threat analysis and monitoring? What technical tools or analytical approaches are most needed?

4. The vast majority of U.S. Free Trade Agreements (FTAs) contain obligations that require U.S trading partners to ''effectively enforce'' their environmental and labor laws, including laws that protect and conserve natural resources, such as marine fisheries, and that protects certain internationally recognized labor rights. These obligations are subject to dispute settlement under the trade agreement, and the U.S. Trade Representative has authority to monitor and review implementation of these and other FTA commitments. The United States is currently seeking commitments in two FTAs, the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), to address IUU fishing activities. Further, looking beyond existing negotiations and to future agreements, it will be important to pursue commitments from trading partners to effectively enforce conservation and management measures they have adopted pursuant to RFMOs. Recommendation: Direct the U.S. Trade Representative to use existing Free Trade Agreements and future FTAs to combat IUU fishing and seafood fraud, including through enhanced cooperation with our trading partners and commitments to enforce environmental and labor laws.

5. Some governments continue to provide subsidies to their fisheries sectors that encourage overfishing or contribute to excess capacity of fishing fleets. Such subsidies also undermine the effectiveness of fisheries management regimes and can contribute to IUU fishing. Recommendation: Direct the U.S. Trade Representative, and the Secretaries of State and Commerce to pursue international commitments to eliminate fisheries subsidies that contribute to excess fishing capacity, overfishing and IUU fishing by 2020.

6. Especially in developing nations, increased national-level capacity is needed to strengthen fisheries governance and transparency, implement the Port State Measures Agreement (PSMA), enforce fisheries laws, and prosecute fisheries violations and related criminal activities. Nations that register fishing and support vessels need the capacity to exercise their responsibilities as flag States, which include issuing fishing authorizations, monitoring fishing and transshipment at sea, conducting enforcement operations, inspecting vessels dockside, and monitoring landings. Improved technological infrastructure is needed for collecting information on vessels and catch to enable effective enforcement, support traceability schemes, and foster sustainable fisheries management. Efforts to combat IUU fishing and seafood fraud need to be integrated with international development activities, in particular food security dialogues and programs. Recommendation: Direct the Secretaries of Commerce, Defense, Homeland Security, State, the Administrator of USAID, and the Attorney General to coordinate with donors, multilateral institutions and foreign governments and prioritize building capacity to sustainably manage fisheries, combat IUU fishing and seafood fraud.

Question: What are the best ways to coordinate in capacity building efforts? In which countries and what types of capacity building activities would have the most impact?

7. Efforts to address development or governance issues related to sustainable fisheries benefit greatly from the active support of and coordination with senior government officials through diplomatic channels, engagement in future oceans conferences, and engagement in influential regional fora. Building these key relationships will further encourage our foreign government partners to enhance their efforts to combat IUU fishing as well as work with U.S. investigative agencies to ensure that illegally caught or fraudulently labeled seafood does not enter commerce. Recommendation: Direct the Secretary of State to maintain combating IUU fishing and seafood fraud as a diplomatic priority in order to gain the support of senior officials in priority countries to enhance political will for combatting IUU fishing and seafood fraud.

Enforcement: Strengthen Enforcement and Enhance Enforcement Tools To Combat IUU Fishing and Seafood Fraud

8. Obtaining and sharing information is another critical element in preventing IUU or fraudulently labeled seafood (including false labels, fraudulent customs declarations, and other similar actions) from entering U.S. commerce (whether from domestic or foreign sources). Mechanisms to gather, share, and analyze information on goods entering the United States exist among relevant administrative and law enforcement agencies, including through Customs and Border Protection's Commercial Targeting and

Analysis Center, Immigration and Customs Enforcement's Homeland Security Investigations Trade Transparency Unit, and through forensic capabilities across the Federal government. However, certain gaps concerning collection, sharing, and analysis of fisheries-related information remain. Recommendation: Direct the Task Force members, to include the Secretaries of Agriculture, Commerce, Health and Human Services, Homeland Security, the Interior, and the Attorney General to develop within 180 days a strategy with implementation deadlines to optimize the collection, sharing, and analysis of information and resources to prevent IUU or fraudulently labeled seafood from entering U.S. commerce. This strategy should include a plan to increase support and coordination across agencies for forensic analysis of seafood species and corresponding collection, archiving and analysis of related reference specimens, as well as reflect efforts to increase coordination with state and local governments per Recommendation 11.

Question: Which key actions should be included in this strategy?

9. Broader customs enforcement tools can also continue to be leveraged to combat IUU fishing and seafood fraud. The U.S. has now signed over 70 Customs Mutual Assistance Agreement (CMAAs) with other customs administrations across the world. CMAAs are bilateral agreements between countries and are effectuated by their respective customs administrations. They provide the legal framework for the cooperation and exchange of information and evidence to assist countries in the enforcement of customs laws, including duty evasion, fraud, smuggling, trafficking, proliferation, money laundering, and terrorism-related activities. CMAAs can be used to support IUU fishing and seafood fraud investigations, facilitate risk-based targeting of illicit seafood shipments, and for further cooperation with foreign governments to develop best practices to prevent IUU or fraudulent seafood from reaching our borders. Recommendation: Direct the Secretary of Homeland Security to leverage existing and future CMAAs to exchange relevant information and encourage foreign customs administrations to cooperate in combating IUU fishing and seafood fraud.

10. Standardizing rules across the U.S. government concerning how to properly identify a seafood product's species, common name and origin would better support detection and enforcement efforts to combat IUU fishing and seafood fraud. Standardization of this information would minimize opportunities to avoid detection by exploiting inconsistencies across Federal agencies and ambiguities in existing requirements and industry conventions. Standardized rules would also promote better industry compliance and reduce inadvertent noncompliance by providing clearer guidance to industry about how to properly identify fish and seafood, including their origin. Recommendation: Direct the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security, with input from the Attorney General, to standardize and clarify rules on identifying the species, common name, and origin of seafood. Direct the Secretaries of Commerce and Homeland Security and the U.S. Trade Representative to work with the International Trade Commission to adjust U.S. tariff codes to enhance identification in trade of species subject to IUU fishing or seafood fraud accordingly. The agencies should aim to publish these revised rules and adjusted codes not later than one year after the adoption of this recommendation.

Questions: What seafood products could benefit most from clarification of species, common name and rules of origin? What revisions to the tariff codes (at the level than can be adjusted for U.S. statistics) could help address seafood fraud and facilitate monitoring of species that may be harvested in IUU fisheries?

11. State and local enforcement authorities have an important role in regulating fisheries, both through enforcement in state waters and working with the National Oceanic and Atmospheric Administration (NOAA) on landings of fish harvested in federal waters. The National Oceanic and Atmospheric Administration works with state and local authorities to obtain and share information with respect to domestic fisheries. State and local enforcement authorities also have an important role in detecting and preventing seafood fraud, since intrastate seafood sales, including those at the restaurant and retail level, are largely regulated by state and local authorities. Recommendation: Direct the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security, and the Attorney General to work with state and local enforcement authorities to expand information sharing and develop tools that address illegal fishing and seafood fraud at the state and local level.

Question: How can Federal enforcement agencies expand information sharing with state and local enforcement authorities?

12. Additional enforcement tools are needed by certain enforcement agencies to address growing concerns over IUU fishing and the entry of seafood products from IUU fishing into U.S. commerce including: Broader and clearer search and inspection authorities, investigative subpoena authority, increased penalties, and civil judicial enforcement mechanisms. Recommendation: Work with Congress to the extent necessary to broaden agency enforcement authorities, including those to (1) search, inspect and seize seafood, both at the point of entry into U.S. commerce (whether from foreign or domestic sources) and throughout the supply chain; and (2) pursue a full range of judicial enforcement options for trafficking and other violations related to IUU fishing and seafood fraud.

Partnerships: Create Partnerships With Industry and Non-Governmental Organizations To Identify and Eliminate Seafood Fraud and IUU Seafood in U.S. Commerce

13. Private and public sector partnerships are essential to preventing and reducing the entry of fraudulent seafood products and products from IUU fishing into U.S. commerce. Recommendation: Direct the Task Force to establish a regular forum with harvesters, importers, dealers, retailers, processors and non-governmental organizations to enhance collaboration in combating IUU fishing and seafood fraud and to improve understanding of the levels and nature of IUU fishing and seafood fraud and related criminal activities.

Traceability: Create a Risk-Based Traceability Program To Track Seafood From Harvest to Entry Into U.S. Commerce

14. It is in the national interest to prevent the entry of illegal goods, including illegal seafood into U.S. commerce. Creating an information system that better facilitates data collection, sharing, and analysis among relevant regulators and enforcement authorities would be a significant step forward in addressing IUU fishing and seafood fraud. To that end, the United States should work with industry and other stakeholders to define the types of information to be collected regarding seafood sold in the United States and the operational standards to be applied to the collection, retention, and

transmission of such information. The information collected could include:

- Who harvested or produced the fish (*e.g.* name and flag State of harvesting vessel and/or farm facility, type of fishing gear)?
- What species was harvested (*e.g.* species name, form, and quantity of the product)?
- Where and when was the seafood harvested and landed (*e.g.* ocean area of catch, farm location, date of harvest, date/point of first landing)?
- Other relevant details, such as transshipment and/or processing activity.

The process to develop types of information and operational standards under each of the categories above should allow for input from interested stakeholders including industry, non-governmental organizations, supply-chain experts, and state, local and foreign governments. It should also draw upon and utilize applicable experience, best practices, and existing standards where possible. This program should be developed in a way that permits all authorized agencies to enter, analyze, use, and verify the data while still protecting information consistent with statutory authorities. The types of information and operational standards should apply no less favorably as between domestic and imported products. Recommendation: Direct the Task Force, with input from U.S. industry and other stakeholders, to identify and develop within six months a list of the types of information and operational standards needed for an effective seafood traceability program to combat seafood fraud and IUU seafood in U.S. commerce.

Question: Accounting for those listed above, what types of information and operational standards should be included in a traceability program?

15. Following Recommendation #14, a program will be developed and implemented to establish these types of information and operational standards as pre-requisites for entry into commerce. The program will initially be applied to certain fish or seafood that are of particular concern because they are subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing. However, the goal would be to eventually expand the program to all seafood at first point of sale or import, after consideration of relevant factors such as input from stakeholders and cost-effectiveness. To achieve this:

a. The Secretaries of Commerce, Health and Human Services, State, and any other relevant agencies will identify certain species of fish or seafood that are of particular concern because they are subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing. The Secretaries of Homeland Security, HHS, and Commerce, and other agencies, as appropriate, will work together to implement Recommendation #14 requirements for the collection of relevant and necessary data from, and compliance with operational standards by, importers of these identified species, as consistent with existing authorities.

b. The Secretaries of Commerce and Health and Human Services will then work with the Regional Fishery Management Councils, states, and other partners to require this same information from these identified species when they are domestically harvested or produced.

c. Information collected will be shared among Federal administrative and law enforcement agencies for analysis and other relevant actions to prevent IUU or fraudulently labeled seafood from entering U.S. commerce pursuant to the strategy developed by the Secretaries of Agriculture, Commerce, Health and Human Services, Homeland Security, and the Interior, and the Attorney General (Recommendation #8).

d. The Secretary of Homeland Security will collaborate with the Secretary of Commerce and other agencies as relevant to assist in developing a voluntary Commerce Trusted Trader Program for importers of these identified species. The Program will provide benefits such as reduced targeting and inspections and enhanced streamlined entry into the United States for certified importers.

e. Implementation of this risk-based traceability program will be evaluated regularly, beginning within one year of requiring the types of information for at-risk species, to identify whether it is meeting the intended objectives in the most effective way possible, while considering costs and benefits. The Task Force will consider the next steps in expanding the program to other seafood entering U.S. commerce. This evaluation will include input from stakeholders and identify any additional resources or legal authorities that may be necessary to cover additional species and types of product, and to make the information available to the consumer.

f. Within one year of requiring the types of information for at-risk species, the Task Force will develop further recommendations on how certain types of information within the traceability system (*e.g.* species; geographic origin; means of production, such as wild-caught versus aquaculture; and gear type) could be made available to the consumer.

Recommendation: Direct the Task Force to establish, within 18 months, the first phase of a risk-based traceability program to track seafood from point of harvest to entry into the U.S. commerce.

Questions for Recommendation #15:

(a) Which species are currently at highest risk of IUU fishing and seafood fraud and what factors contribute to species becoming at high risk in the future?

(b) What are the specific characteristics and workings of the global seafood supply chain that should be taken into account when requiring information?

(c) What are the best approaches for expanding the risk-based program to incorporate other fish and seafood products entering into U.S. commerce?

(d) How often should the risk-based program be evaluated?

(e) What roles should government and private sectors serve in managing and evaluating the program?

Reporting: Where a timeframe is not specifically noted under a recommendation, the relevant agencies will report to the Task Force on the progress of implementing that recommendation in one year from receiving guidance from the President. In addition, recognizing that a valuable and extensive body of information on fisheries and seafood products would be created by the recommendations above, the Task Force will report annually to the President, via the National Ocean Council, on seafood trends, key issues related to IUU fishing and seafood fraud, and progress on development and implementation of a comprehensive and risk-based traceability program.

Dated: December 15, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–29628 Filed 12–16–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2014–0047]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice, A0195–6 USACIDC, entitled ''Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files'' in its existing inventory of records systems subject to the Privacy Act of 1974, as amended. This system will be used to determine applicant's acceptance into or rejection from the USACIDC program; continuing eligibility, placement or standing therein; and to manage and evaluate polygraph examination performance.

DATES: Comments will be accepted on or before January 20, 2015. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

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

* Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Jr., Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/*.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended were submitted on December 9, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 12, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0195–6 USACIDC

SYSTEM NAME:

Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files (February 7, 2001, 66 FR 9298)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, U.S. Army Criminal Investigation Command (USACIDC), Russell Knox Building, 27130 Telegraph Road, Quantico, Virginia 22134–2253.

Information concerning polygraph examiners is located at the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, Russell Knox Building, 27130 Telegraph Road, Quantico, Virginia 22134–2253, and subsequently at the Washington National Records Center, GSA, 4205 Suitland Road, Suitland, Maryland 20746–8001.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's application, name, date of birth, current address, and telephone number, agent sequence number, DOD ID number, badge/credential number, statement of personal history, personal identifiers, photographs, fingerprint cards, qualifications record, biography, information pertaining to assignment capability or limitation, letters of recommendation, educational institutional documents, character investigation data, reclassification actions, reassignment orders, commander's inquiry data, reports of investigation, reasons for withdrawal from program, reason for denying application, date of acceptance into program, date appointed, date of accreditation, badge number, credential number, polygraph certificate number, agent sequence number, assignment, date assigned, marital status, and other data pertinent to the accreditation function, physical profile, date of last physical, assignment preference, transfer restrictions, job title, security clearance data, date of last background investigation, foreign language proficiency, special qualifications, service agreement, spouse's place of birth and citizenship, agent's place of birth, private licenses, hobbies, and last 10 assignments. Polygraph examiner performance and evaluation data maintained at the Crime Records Center (CRC) include individual's full name, personal history statement, certificate number, polygraph examination history, year of polygraph report, report of investigation or CRC cross reference number, type of examination, and monitor's comments.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; Army Regulation 195–6, Department of the Army Polygraph Activities.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''By individual's name, agent sequence number, DoD ID number, badge/credential number.''

SAFEGUARDS:

Delete entry and replace with ''All records are maintained in buildings protected by security guards or a locked wire enclosure; information is accessed only by designated individuals having official need therefore in the performance of assigned duties. DoD Components and approved users ensure that electronic records collected and used are maintained in controlled areas accessible only to authorized personnel. Physical security differs from site to site, but the automated records are maintained in controlled areas accessible only by authorized personnel. Access to computerized data is restricted by use of common access cards (CACs) and is accessible only by users with an authorized account. The system and electronic backups are maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards, and locks.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Commander, Headquarters, U.S. Army Criminal Investigation Command, Russell Knox Building, 27130 Telegraph Road, Quantico, Virginia 22134–2253.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine

whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, Russell Knox Building, 27130 Telegraph Road, Quantico, Virginia 22134–2253.

For verification purposes, individual should provide the full name, Social Security Number (SSN), date and place of birth, current address, telephone numbers, date of application to the program, sufficient details to locate the record, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, Russell Knox Building, 27130 Telegraph Road, Quantico, Virginia 22134–2253.

For verification purposes, individual should provide the full name, SSN, date and place of birth, current address, telephone numbers, date of application to the program, sufficient details to locate the record, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

* * * * *

[FR Doc. 2014–29595 Filed 12–17–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD15–5–000]

Imperial Irrigation District; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions to Intervene

On November 26, 2014, the Imperial Irrigation District filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Rockwood Heading on Central Main Canal In-Conduit Hydroelectric Project would have an installed capacity of 170 kilowatts (kW) and would be located on the existing Central Main Canal. This conduit transports water for irrigation, municipal, and industrial purposes. The project would be located near the city of Brawley in Imperial County, California.

Applicant Contact: Carl Stills, 1651 West Main Street, El Centro, CA 92243, Phone No. (760) 339–9701.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) One proposed 23.7-foot-long, 14.5-foot-wide concrete box intake structure with a 10-foot-wide gate; (2) a proposed 15-by-20-foot powerhouse containing a turbine generator unit with an installed capacity of 170 kW; (3) the proposed 35-foot-long, 14.5-foot-wide concrete box tailrace structure which returns the water into the Central Main Canal; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 941 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. 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.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD15–5–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: December 10, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29626 Filed 12–17–14; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2014).

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Post-2017 Resource Pool

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final power allocation.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces the Boulder Canyon Project (BCP) Post-2017 Resource Pool Final Allocation of Power (BCP Final Allocation). The BCP Final Allocation was developed pursuant to the Conformed Power Marketing Criteria or Regulations for the Boulder Canyon Project (2012 Conformed Criteria) published in the **Federal Register** on June 14, 2012, as required by the Hoover Power Allocation Act of 2011, and Western's final BCP post-2017 marketing criteria and call for applications published in the **Federal Register** on December 30, 2013. This notice also includes Western's responses to comments on proposed allocations published on August 8, 2014. The BCP Final Allocation documents Western's decisions prior to beginning the contractual phase of the process. Electric service contracts will provide for delivery from October 1, 2017 to September 30, 2067.

DATES: The BCP Final Allocation will become effective December 19, 2014.

ADDRESSES: Information regarding the BCP Final Allocation including comments, letters, and other supporting documents is available for public inspection and copying at the Desert Southwest Customer Service Region, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, AZ 85009. Public comments and related information may be accessed at *http://www.wapa.gov/dsw/pwrmkt/BCP_Remarketing/BCP_Remarketing.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Mike Simonton, Public Utilities Specialist, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone number (602) 605–2675, email *Post2017BCP@wapa.gov.*

SUPPLEMENTARY INFORMATION: The BCP was authorized by the Boulder Canyon Project Act of 1928 (43 U.S.C. 617) (BCPA). Under Section 5 of the BCPA, the Secretary of the Interior marketed the capacity and energy from the BCP under electric service contracts effective through May 31, 1987. In 1977, the power marketing functions of the Secretary of the Interior were transferred to Western by Section 302 of the Department of Energy Organization Act (42 U.S.C. 7152) (DOE Act). On December 28, 1984, Western published the Conformed General Consolidated Criteria or Regulations for Boulder City Area Projects (1984 Conformed Criteria) (49 FR 50582) to implement applicable provisions of the Hoover Power Plant Act of 1984 (43 U.S.C. 619) for the marketing of BCP power through September 30, 2017.

On December 20, 2011, Congress enacted the Hoover Power Allocation Act of 2011 (43 U.S.C. 619a) (HPAA), which provides direction and guidance in marketing BCP power after the existing contracts expire on September 30, 2017. On June 14, 2012, Western published the 2012 Conformed Criteria (77 FR 35671) to implement applicable provisions of the HPAA for the marketing of BCP power from October 1, 2017, through September 30, 2067. The 2012 Conformed Criteria formally established a resource pool defined as ''Schedule D'' to be allocated to new allottees. In accordance with the HPAA, Western allocated portions of Schedule D power to the Arizona Power Authority (APA) and the Colorado River Commission of Nevada (CRC), as described in the June 14, 2012 **Federal Register** notice. Of the remaining Schedule D power, Western is to allocate 11,510 kilowatts (kW) of contingent capacity and associated firm energy to new allottees within the State of California and 69,170 kW of contingent capacity and associated firm energy to new allottees within the Boulder City Area (BCA) marketing area as defined in the 2012 Conformed Criteria.

After conducting a public process and in consideration of comments received, Western published Final BCP Post-2017 Marketing Criteria (Marketing Criteria) and Call for Applications on December 30, 2013 (78 FR 79436). Applications from those seeking an allocation of Schedule D power from Western were due on March 31, 2014. Western published the BCP Post-2017 Resource Pool Proposed Allocation of Power (BCP Proposed Allocation) in the **Federal Register** on August 8, 2014 (79 FR 46432). Public information and comment forums were held in Las Vegas, Nevada; Ontario, California; and Tempe, Arizona. Western received comments from existing power contractors, Native American tribes, cooperatives, municipals, and other potential contractors. Transcripts of the public forums, as well as comments received, may be viewed on Western's

Web site at *http://www.wapa.gov/dsw/pwrmkt.*

The BCP Final Allocation was determined from the applications received during the call for applications in accordance with the guidelines of the 2012 Conformed Criteria and the Marketing Criteria.

Response to Comments on the BCP Proposed Allocation

Western received numerous comments on its BCP Proposed Allocation during the comment period. Western reviewed and considered all comments received. This section summarizes and responds to the comments received on the BCP Proposed Allocation. The public comments below are paraphrased for brevity when not affecting the meaning of the statement(s).

Comment: Several comments noted that Western's proposed allocations are consistent with the HPAA and the Marketing Criteria, which result in a reasonable distribution.

Response: Western appreciates the support for its application of the Marketing Criteria resulting in reasonable allocation distributions that are consistent with the provisions of the HPAA.

Comment: Several comments expressed appreciation and support for the proposed allocations. Western is acknowledged for administering a fair, expedient, and consistent process in the development of the proposed allocations. Final approval of the proposed allocations will enable allottees to achieve significant cost savings that will greatly benefit their communities, provide a widespread benefit of the BCP resource to new entities, and ensure allottees a stable, renewable, and environmentally friendly resource for the next 50 years.

Response: Western appreciates the support and recognition of a fair, expedient, and consistent process administration. Western finds the BCP Final Allocation promotes widespread use principles that are in the public interest while navigating a multitude of competing interests.

Comment: For Native American communities, access to low-cost power, such as BCP power, is a critical component to economic development and self-sufficiency programs. Western's ongoing recognition of tribal preference power status is therefore an extremely important contributor.

Response: Western appreciates the support for its efforts related to tribes.

Comment: Specific applicants requested a review of how their application was considered and potential allocation calculated. Corrections should be made in the event assumptions required adjustment.

Response: Western provided descriptions and explanations of calculation methodologies at three public information forums and provided further detail in written responses to questions posed. For those that sought additional information, Western provided a more detailed summary of the calculations applicable to their application. In the process of reviewing Western's calculations and considerations, two corrections were made.

In considering the Gila River Indian Community's (GRIC's) application, Western accounted for the direct allocation of Colorado River Storage Project (CRSP) power to GRIC and also erroneously included the same CRSP allocation as an indirect resource supplied by one of GRIC's host utilities, the Gila River Indian Community Utility Authority (GRICUA). When considering the application of the Metropolitan Domestic Water Improvement District (MDWID), the load distribution across MDWID's host utilities was incorrectly recorded, having an impact on the calculation of indirect benefits of Federal power.

In the calculation of the final allocations, Western has removed the indirect benefits of GRIC's CRSP resource through the GRICUA host utility and corrected the load distribution of MDWID across its host utilities. These corrections altered not only the allocations of GRIC and MDWID, but other allottees as well.

Comment: As private corporations, electric cooperatives fall within the defined class of beneficiaries set forth in Section 5 of the BCPA. The proposed allocations are within this legal predicate. As a consequence, Western should refrain from considering any comments that encourage revisiting the eligibility of cooperatives to receive power under Schedule D of the HPAA. The class of eligible entities as defined by the 2012 Conformed Criteria should remain consistent as Western develops the final allocations.

Response: Comments concerning matters other than the BCP Proposed Allocation are outside the scope of this process. However, for clarity, Western agrees with the eligibility of cooperatives as determined in the development of the Marketing Criteria.

Comment: At times, Western reduced the peak load of an applicant who is a host utility upon receiving an application from potential recipients within that host utility's service territory. Some applicants within these host utility service areas were not selected for a proposed allocation. For the sake of developing a fair and equitable calculation that relies on an accurate depiction of peak load, Western should recalculate the host utility's peak load used for calculating their proposed allocation by adding back those loads of unsuccessful applicants that Western subtracted from the host utility's peak load calculations. Failure to do so will result in a discriminatory allocation process that denies electric ratepayers' access to the Hoover resources that they are otherwise eligible to receive. Allocations should be re-calculated after these peak load adjustments have been made. These adjustments are particularly important in instances where the applicant within the host utility's service area was not eligible under the 2012 Conformed Criteria. In those circumstances, Western has decreased the host utility's load profile without justification that can be sustained. If Western is unable to adjust peak load in this manner, the commenter suggested that Western should give first priority to the power that a proposed allottee relinquishes due to load substantiation deficiencies, lack of viable transmission access, or other such reasons, and allocate to those entities that should have received a higher allocation if Western had not reduced the peak load submission.

Response: Western finds merit in this comment and has accepted it. In the development of the BCP Final Allocation, Western re-instated loads from unsuccessful applicants back to their host utility that maintains load serving responsibility for these loads and recalculated the host utility's final allocation.

In the event an applicant was successful in being awarded an allocation, Western retained the reduction to their host utility's application in order to refrain from considering the same load in the calculation of two separate allocations. In accepting this final allocation method, Western will not be providing a priority to the power that a proposed allottee relinquished because of load substantiation deficiencies, viable transmission access, or other such reasons.

Comment: In substantiating load data, Western should rely on proven data sources such as Balancing Authority metered data, metered data from a Generation and Transmission Provider, and Transmission Provider meter data. Western should inform proposed allottees of data sources that would be insufficient or incomplete to

substantiate loads prior to the October 3, 2014 deadline. If any inconsistencies arise after load substantiation submissions on October 3, 2014, proposed allottees should be provided an opportunity to correct any submissions so that the load data Western will use is completely accurate.

Response: On August 21, 2014, Western sent a letter to all proposed allottees requiring them to substantiate their actual loads as supplied in the applications. Load substantiation materials could include, among other things, meter verification reports, historical billing records, annual reports, and host utility reports. Tribes were able to use estimated historical load values, subject to Western's review and adjustment, if actual load data was not available. Western received load substantiation materials from all final allottees and worked collaboratively to ensure actual loads were accurately depicted based on reliable materials including verified metering and/or billing data. Western informed those with insufficient or incomplete data submittals in a timely fashion and provided an opportunity to revise, correct, or confirm any inconsistencies identified. All final allocations are based on substantiated historical loads.

Comment: Western is encouraged to develop operational protocols as soon as possible to facilitate planning of necessary transmission arrangements.

Response: Western intends to establish operational protocols within the contract negotiation process. This is anticipated to occur in calendar year 2015.

Comment: The City of Maricopa (Maricopa) is served by Electrical District No. 3 (ED3). Western's allocation methodology assumed that existing Federal power enjoyed by ED3 is shared indirectly with Maricopa. This resulted in Maricopa not receiving a proposed allocation because ED3's existing Federal power exceeds the targets that Western was able to establish in the allocation of BCP. While Maricopa is served by ED3, Maricopa does not benefit from ED3's historic allocation of Federal power. ED3's Federal power allocations are used exclusively for agriculture. This is evidenced by review of ED3's published rate structures that differentiate rates for agricultural irrigation loads and other uses. These rates clearly define how ED3 sequesters its Federal hydro allocation from benefiting non-agricultural customers such as the Maricopa. Based on the fact that Maricopa does not benefit from ED3's Federal allocation, Western should treat Maricopa as a separate island from ED3 in the calculation of BCP allocations.

Response: In reviewing the comment, Western initially evaluated Maricopa's application without considering ED3's Federal power allocations as suggested by Maricopa. However, even under this scenario, Maricopa would still be ineligible to receive an allocation due to not meeting the minimum allocation threshold.

Comment: The City of Sierra Vista (CSV) is served by Sulphur Springs Valley Electric Cooperative Inc. (SSVEC). Western's allocation methodology assumed that existing Federal power enjoyed by SSVEC is shared indirectly with CSV. This resulted in CSV not receiving a proposed allocation because its indirect share of SSVEC's existing Federal power causes CSV's target percentage peak load to fall below the 100 kW minimum threshold. This logic unfairly punishes an entity whose energy goals are to minimize consumption as a buyer, while it favors an entity that encourages consumption as a seller. Western's proposed allocation between SSVEC and CSV proves this with the later receiving zero and the former receiving the maximum allowed in this program (3,000 kW). SSVEC has various retail rates differentiating classes of customers, namely irrigation versus commercial classes. The average price paid by CSV to SSVEC is comparable to rates charged by Arizona Public Service and Tucson Electric Power, disproving any existing indirect benefit from existing Federal power finding its way to the CSV. It is proposed that a carve-out of 150 kW be taken from the proposed allocation to SSVEC and reallocated to the CSV.

Response: The Marketing Criteria calls for allocation distributions based on historical loads with minimum and maximum allocation thresholds. Western finds distribution based on load is a reasonable means of promoting widespread use of Federal power to a diverse base of customers. Based on the comments provided, Western is not convinced that Federal power provided to SSVEC does not benefit CSV. There are many circumstances and variables contributing to the rates that CSV pays SSVEC. Comparing the rates CSV pays to the rates of neighboring investor owned utilities is not an indication of a lack of indirect Federal power benefit CSV might enjoy via SSVEC. In the calculation of the BCP Final Allocation, Western accounted for these indirect Federal power benefits when considering CSV's application.

Comment: Several proposed allottees are served by Salt River Project (SRP). In the development of the proposed allocations, Western considered the indirect benefits of SRP's Federal power allocations associated to BCP, CRSP, and Parker Davis Project. These resources are supplemented by 450,000 kW from the Navajo Generating Station (NGS) in Page, Arizona, which was funded and developed as a Federal project. The ''Exchange Agreement'' (Contract No. 14–06–400–2468) (Exchange Agreement) with the U.S. Bureau of Reclamation (Reclamation) gives 533,000 kW of CRSP Glen Canyon dam capacity to SRP. The origins of SRP are rooted in Federal funding used to construct a series of dams on the Salt River with a capacity of 270,000 kW. Western should include these indirect benefits of existing Federal power when determining the allocations within SRP territory if it uses such logic for other applicants with indirect benefits of Federal power.

Response: Reclamation has a 24.3 percent participating interest in the NGS, which is used to provide power for the Central Arizona Project (CAP), the Federal water project designed and constructed between the 1970s and early 1990s to deliver Colorado River water to agricultural water users in central Arizona and many of the state's largest municipal water users. SRP does not have an allocation of the Federal interest in the NGS. Power that is not reserved for CAP use is made available to the wholesale market where it may be purchased by other utilities, including SRP. This does not convey an allocation or entitlement to portions of Reclamation's participating interest in the NGS; this surplus power is not sold at-cost, and therefore is not considered equivalent with the benefits of Federal power allocations.

The Exchange Agreement does not convey Glen Canyon generating capacity to SRP for its use. The Exchange Agreement provides for up to 500 megawatts (MW) of Glen Canyon generation delivered to SRP in exchange for receiving like amounts of thermal generation from SRP at alternate delivery points. This arrangement was established to reduce the amount of transmission constructed by both parties. This does not convey to SRP an allocation or entitlement to Glen Canyon generation and therefore is not considered on par with the benefits of Federal power allocations.

Western acknowledges that the origins of SRP are rooted in Federal projects consisting of a series of dams on the Salt River, however a multitude of examples demonstrating widespread and diverse benefits of Federal funding must be considered if one includes

SRP's origins. For example, CAP water users also enjoy an economical electric supply of NGS and BCP power. Many customers benefit from the capabilities of the Federal transmission system. For the purposes of this effort, Western focused on the quantifiable direct and indirect benefits of Federal power allocations in promotion of widespread use of Federal power consistent with Western's statutory mission to market and deliver Federal hydropower. Western does not find it appropriate or quantifiable to consider Federal participation in the origins of an applicant or the applicant's host utility in these proceedings.

Comment: When speaking of ''direct and indirect benefits,'' Western has not defined what the term ''benefits'' means. The relative magnitude of an applicant's electrical consumption was not a basis when considering the ''benefits'' of Federal power. An allocation of 1 MW to a small utility is a significant resource that will greatly ''benefit'' the applicant. The allocation of 3 MW to a large utility with almost a 1,000 MW load doesn't derive the same ''benefit.'' Western has not stated the basis for having a ceiling of 3 MW. Why couldn't the ceiling have been 2 MW and allocate more capacity to smaller utilities that can ''benefit'' from an allocation of between 100 kW and 1 MW? A small customer is discriminated against simply because it has a small peak load that is met by a Federal resource that is greater than the peak load targets Western established and not whether the Hoover Schedule D would greatly ''benefit'' these small applicants. It is doubtful that the receipt of Hoover Schedule D power will have little if any impact on a large allottee's overall cost of power, while any allocation will substantially ''benefit'' a small allottee's cost of power. A 2 MW ceiling is just as meaningful as a 3 MW ceiling and would result in power being allocated to small entities that can ''benefit'' the most from an allocation of Hoover D power.

Response: Western has historically used the term ''benefits'' of Federal hydropower to refer to the economic cost displacement of avoiding more costly power supply purchases or investments. This economic cost displacement is assumed to be universal regardless of the relative size of the allottee.

Western considered a substantial body of comments when establishing the Marketing Criteria and found a 3 MW maximum allocation would provide a balance between meaningful allocations and promoting widespread use to a diverse base of customers. At this time, Western is only considering comments on the BCP Proposed Allocation and not the Marketing Criteria, including the 3 MW maximum allocation provision.

Comment: The Agua Caliente Band of Cahuilla Indians (ACBCI) urges Western to reconsider its allocation of just 1,449 kW to ACBCI and increase such allocation to at least 2,500 kW to 3,000 kW. This increase of allocation should be granted since (1) Western should have accommodated ACBCI's future load needs and not only consider historical loads; (2) ACBCI's current Parker-Davis allocation is not relevant to this process and should have been disregarded; and (3) the ''contingent'' nature of the BCP allocation further reduces what actual capacity ACBCI might receive from the BCP, placing ACBCI in a position of uncertainty in regard to its expansion plans.

Response: These comments substantially concern matters other than the BCP Proposed Allocation and are outside the scope of this process. However, for clarity, Western considered and replied to comments related to the load basis to be used in the determination of allocations and the consideration of existing Federal power allocations when establishing the Marketing Criteria. Western determined that consideration of future loads would introduce speculation and unquantifiable collective risk across all applicants and will not be the foundation of establishing allocations. Western also determined that it would consider the benefits of existing Federal power allocations for all applicants. The ''contingent'' nature of the BCP allocation will result, at times, in all BCP customers receiving less resource than what was marketed. This has been the case for the vast majority of the current contract term of 30 years and is projected for the foreseeable future. A pro-rata reduction will be applied universally to all BCP customers.

Comment: Several commenters indicated support for tribal allocations as proposed and a final allocation scheme that vests allocations of at least some quantity over the 100 kW minimum to every tribal applicant. Several tribal applicants received no proposed allocation and some comments expressed support for any reallocation scheme that favors tribes including those not already considered qualified.

Response: Western appreciates the support for tribal allocations as proposed. In establishing the BCP Final Allocation, there were some tribal applicants excluded due to the application of the Marketing Criteria to the applications received.

Comment: Western's application of its published allocation criteria in this process need not penalize any tribes and should not preclude allocations to specific tribal applicants. The wording of the criteria as written allows for tribes to now receive BCP power without a total preclusion based on the receipt of other Federal resources if the 25 percent cap is applied differently. Such revisions to what is now proposed would be consistent with Western's obligations as resource administrator and Federal trustee to tribal interests, while also avoiding an overall process delay or disparate burden on non-tribal customers, as California recipients are proposed to receive an almost proximate share of the resource (20.8 percent) despite the absence of historical or trust considerations.

Response: The BCP Final Allocation was established by applying the Marketing Criteria to the applications received and comments concerning the Marketing Criteria are outside the scope of this process. Western is not convinced that circumventing the Marketing Criteria, which already provides a first consideration for Native American tribes, would be fair, equitable, or in the public interest.

Comment: Investor owned utilities are not preference power entities and a phase-out program diminishing their allocation over time would be appropriate. This should be considered when the next power marketing plan is developed.

Response: Western is not allocating any Schedule D power to an investor owned utility. Therefore, this comment is outside of the scope of the proposed allocations under consideration.

Comment: The HPAA states in part that ''[i]n the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for new allottees other than federally recognized Indian tribes shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively.'' 43 U.S.C. 619a(a)(2)(C)(ii). To appropriately apply these ''through'' provisions in Arizona, Western should forward a list of the successful non-tribal applicants located in Arizona to APA. The APA would then enter into a standard power sales contract utilized by the APA for its customers for the specific federally-allocated amount of Schedule D power with the successful Arizona applicant. The power sales contract would include the relevant contract terms mandated by HPAA for Schedule D power.

Response: Western considers this a contracting issue outside the scope of this process. However, for transparency,

Western has adopted the ''through'' provisions described in HPAA in the 2012 Conformed Criteria (77 FR 35676). Western intends to contract with APA and CRC for the capacity and energy allocated to non-tribal entities in the States of Arizona and Nevada respectively. These contracts will require APA and CRC to contract with the new allottees for the amount of power allocated to them by Western and contain all contract terms required by the HPAA, the 2012 Conformed Criteria, and any necessary provisions prescribed in Western's contracts with APA and/or CRC.

Comment: The CRC presented a series of concerns with how Western has conducted this process which include:

(1) Western has refused to provide public access to its calculations and work papers, which denies participants the opportunity to participate effectively in this proceeding.

(2) Western has denied allocations to eligible Nevada applicants by incorrectly calculating the current Hoover power benefit to Nevada Power Company's (NPC's) non-residential customers.

(3) Western has issued proposed allocations without verifying applicant loads, which must lead to significant questions regarding whether the allocations are valid.

(4) Western has denied allocations to eligible Nevada applicants by applying an extreme version of super-priorities for tribes, which is not authorized by the HPAA.

(5) Western has denied allocations to eligible Nevada applicants by giving preference to cooperatives, which is not authorized by the HPAA. There is no legislative authority for Western to allocate Schedule D power to electric cooperatives.

(6) Western should apply its criteria in a manner which ensures that Nevada's share of Hoover power is closer to the ⅓ authorized by the 1928 Act, not in a matter that exacerbates the disparity.

(7) Western has not yet taken the necessary steps to ensure that Nevada non-tribal applicants receiving allocations through its process will contract for Schedule D power through the CRC.

(8) Western has not yet ensured that entities crossing state boundaries will pay their proportionate share of Hoover-related costs.

(9) Western has not yet re-issued its Hoover Conformed Criteria in a single integrated document, making it extremely difficult for applicants to understand the process.

Response: Western's responses in turn to CRC's comments are as follows:

(1) Western responded to all questions presented at the public information forums prior to the close of the comment period, including how the Marketing Criteria were applied to the applications received. The CRC request included access to all materials contained in all applications, in particular applicant peak load and resource portfolio information. This information has historically been treated as confidential and proprietary information in the electric industry. Furthermore, Western has previously received numerous comments from applicants explicitly stating that application data is confidential, proprietary, and disclosure by Western of this information would be inappropriate. All applicants that requested further detail regarding the consideration of its application were provided a detailed summary of how the application was considered. Western finds that sufficient information has been provided for all parties to understand how the Marketing Criteria were applied to the applications received in order to calculate the BCP Final Allocation.

(2) Western has reviewed CRC's comment regarding the calculation of indirect benefits of Federal power for those applicants with load served by the NPC and finds merit in accepting the comment as suggested. In the calculation of the proposed allocations, Western assumed the CRC sub-allocation of BCP power to NPC of 235,232 kW benefited all NPC's customers totaling a peak load of 5,761,000 kW as reported by the Energy Information Administration (EIA) for calendar year 2012. This resulted in Western's assumption of approximately 4.1 percent of peak load being served by Federal power for all applicants' load served by NPC. In researching CRC's comments, Western confirmed that Schedule B (135,000 kW) is limited to NPC residential customers only. This leaves Schedule A (100,232 kW) left to serve NPC load. As reported by NPC and cross-referenced with EIA 2012 data, NPC load is composed of approximately 42.7 percent residential and 57.3 percent non-residential. This warrants the consideration of 57.3 percent of NPC's Schedule A, or 57,461 kW, benefiting non-residential customers served by NPC (3,302,675 kW) equating to a NPC indirect Federal power benefit to non-residential applicants of approximately 1.74 percent. Western finds that no residential load is represented in those applicants with load served by NPC. Western recalculated the final post-2017 allocations assuming approximately 1.74 percent of NPC non-residential customers' peak load is being served by Federal power.

(3) Western did not find it appropriate to verify loads in developing proposed allocations as they are subject to change. Western has since required all allottees to substantiate their actual loads as supplied in the applications. Western received load substantiation materials from all final allottees and worked collaboratively to ensure actual loads were accurately depicted based on reliable materials, including verified metering and/or billing data.

(4) Western considered and replied to comments related to a first consideration for Native American tribes when establishing the Marketing Criteria. At this time, Western is only considering comments on the BCP Proposed Allocation and not the Marketing Criteria, which includes a first consideration for Native American tribes.

(5) Western considered and replied to comments related to the preference and eligibility of cooperatives when establishing the Marketing Criteria. At this time, Western is only considering comments on the BCP Proposed Allocation and not the Marketing Criteria, which includes the preference and eligibility of cooperatives.

(6) Western considered and replied to comments related to a ⅓ distribution of the 69,170 kW to the States of Arizona, California, and Nevada when establishing the Marketing Criteria. At this time Western is only considering comments on the BCP Proposed Allocations and not the Marketing Criteria, including a ⅓ each distribution among these States.

(7) Western considers this a contracting issue outside the scope of this process. However, for transparency, Western has adopted the ''through'' provisions described in the HPAA in the 2012 Conformed Criteria (77 FR 35676). Western intends to contract with APA and CRC for the capacity and energy allocated to non-tribal entities in the States of Arizona and Nevada respectively. These contracts will require APA and CRC to contract with the new allottees for the amount of power allocated to them by Western and contain all contract terms required by the HPAA, the 2012 Conformed Criteria, and any necessary provisions prescribed in Western's contracts with APA and/or CRC.

(8) This comment also pertains to a contract issue outside the scope of this process. However, Western stated in the 2012 Conformed Criteria that contract

offers shall contain a provision requiring a new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (as defined in Section 9401 of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11; 123 Stat. 1327)). Western will work with stakeholders to ensure the provisions of the HPAA and the 2012 Conformed Criteria are met in this regard during the contracting process in calendar year 2015.

(9) While establishing the Marketing Criteria, Western stated that it will not combine all this information into one integrated document. Material is available for review at Western's BCP Web site located at *http://www.wapa.gov/dsw/pwrmkt/BCP_Remarketing/BCP_Remarketing.htm.*

Final Power Allocation

The BCP Final Allocation is made in accordance with the 2012 Conformed Criteria, the HPAA, and Western's Marketing Criteria. All allocations are subject to the execution of a contract in accordance with the 2012 Conformed Criteria. After substantiation of applicant loads, corrections as described within, and consideration of comments; two allottees were added and one removed from the list of allottees contained in the BCP Proposed Allocation. The State of Nevada Department of Administration and the State of Nevada Department of Transportation were added as final allottees. The Duncan Valley Electric Cooperative Inc. was excluded due to the potential allocation falling below the 100 kW minimum allocation threshold.

The BCP Final Allocation is shown in the table below:

Boulder Canyon Project	Final post-2017 power allocations			
Allottee	Contingent capacity (kW)	Firm energy (kWh)		
		Summer	Winter	Total
Agua Caliente Band of Cahuilla Indians	1,449	2,212,925	950,554	3,163,479
Anza Electric Cooperative, Inc	1,596	2,437,679	1,044,541	3,482,220
Augustine Band of Cahuilla Indians	479	731,533	314,227	1,045,760
Bishop Paiute Tribe	380	580,339	249,283	829,622
Cabazon Band of Mission Indians	1,003	1,531,790	657,975	2,189,765
California Department of Water Resources	3,000	4,581,625	1,968,021	6,549,646
Chemehuevi Indian Tribe	1,397	2,133,510	916,442	3,049,952
City of Cerritos, California	3,000	4,581,943	1,964,953	6,546,896
City of Chandler, AZ Municipal Utilities Department	676	1,032,393	443,461	1,475,854
City of Corona, California	2,988	4,563,774	1,955,570	6,519,344
City of Flagstaff, Arizona	201	306,969	131,857	438,826
City of Glendale, Arizona	426	650,591	279,459	930,050
City of Globe, Arizona	115	175,629	75,441	251,070
City of Henderson, Nevada	906	1,383,651	594,342	1,977,993
City of Las Vegas, Nevada	1,054	1,609,678	691,431	2,301,109
City of North Las Vegas, Nevada	763	1,165,260	500,533	1,665,793
City of Payson, Arizona	119	181,738	78,065	259,803
City of Peoria, Arizona	691	1,055,301	453,301	1,508,602
City of Phoenix, Arizona	3,000	4,581,625	1,968,021	6,549,646
City of Rancho Cucamonga, CA Municipal Utility	3,000	4,581,945	1,964,940	6,546,885
City of Scottsdale, Arizona	2,366	3,613,375	1,552,112	5,165,487
City of Tempe, AZ Public Works Department	241	368,057	158,098	526,155
City of Tucson, Arizona Water Department	1,248	1,905,956	818,697	2,724,653
City of Victorville, California	2,625	4,009,209	1,719,255	5,728,464
Clark County School District	3,000	4,581,625	1,968,020	6,549,645
Clark County Water Reclamation District	680	1,038,501	446,085	1,484,586
College of Southern Nevada	281	429,145	184,338	613,483
Fort McDowell Yavapai Nation	338	516,197	221,730	737,927
Gila River Indian Community	3,000	4,581,625	1,968,020	6,549,645
Graham County Electric Cooperative, Inc	312	476,489	204,674	681,163
Hualapai Indian Tribe	381	581,866	249,939	831,805
Imperial Irrigation District	3,000	4,581,625	1,968,021	6,549,646
Kaibab Band of Paiute Indians	124	189,374	81,345	270,719
Las Vegas Paiute Tribe	688	1,050,719	451,333	1,502,052
Las Vegas Valley Water District	3,000	4,581,625	1,968,021	6,549,646
Metropolitan Domestic Water Improvement District	179	273,371	117,425	390,796
Mohave Electric Cooperative, Inc	1,145	1,748,653	751,128	2,499,781
Morongo Band of Mission Indians	1,098	1,676,874	720,296	2,397,170
Navajo Tribal Utility Authority	3,000	4,581,625	1,968,021	6,549,646
Navopache Electric Cooperative, Inc	888	1,356,161	582,534	1,938,695
Northern Arizona Irrigation District Power Pool	246	375,693	161,378	537,071
Pascua Yaqui Tribe	437	667,390	286,675	954,065
Pechanga Band of Luiseno Mission Indians	2,000	3,054,417	1,312,014	4,366,431
Salt River Pima-Maricopa Indian Community	3,000	4,581,625	1,968,021	6,549,646
San Diego County Water Authority	1,619	2,472,728	1,060,370	3,533,098
San Luis Rey River Indian Water Authority	3,000	4,581,625	1,968,021	6,549,646
San Manuel Band of Mission Indians	2,554	3,900,490	1,675,442	5,575,932
State of Nevada Department of Administration	109	166,465	71,505	237,970
State of Nevada Department of Corrections	281	429,145	184,338	613,483
State of Nevada Department of Transportation	116	177,156	76,097	253,253
Sulphur Springs Valley Electric Cooperative, Inc	2,731	4,170,806	1,791,555	5,962,361
Timbisha Shoshone Tribe	119	181,738	78,065	259,803

Boulder Canyon Project	Final post-2017 power allocations			
Allottee	Contingent capacity (kW)	Firm energy (kWh)		
		Summer	Winter	Total
Tohono O'odham Nation	2,709	4,137,207	1,777,123	5,914,330
Tonto Apache Tribe	250	381,802	164,002	545,804
Torres Martinez Desert Cahuilla Indians	1,659	2,533,639	1,088,315	3,621,954
Trico Electric Cooperative, Inc	3,000	4,581,625	1,968,021	6,549,646
Twenty-Nine Palms Band of Mission Indians	1,320	2,015,915	865,929	2,881,844
University of Nevada, Las Vegas	305	465,799	200,082	665,881
Viejas Band of Kumeyaay Indians	1,388	2,119,765	910,538	3,030,303
Total	80,680	123,217,000	52,909,000	176,126,000

The BCP Final Allocation listed above is based on the quantities of contingent capacity and firm energy to be marketed as defined by the HPAA and the 2012 Conformed Criteria. In accordance with the provisions of the HPAA and the 2012 Conformed Criteria, non-tribal allottees in the states of Arizona and Nevada will need to contract for electric service with the APA and CRC. Western will offer electric service contracts to all Native American tribes and California customers. Redistributions of allocated power that is not put under contract by specified dates are prescribed under the provisions of the HPAA, the 2012 Conformed Criteria, and the Marketing Criteria.

Regulatory Procedure Requirements

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Compliance

In accordance with the DOE National Environmental Policy Act Implementing Procedures (10 CFR 1021), Western has determined that these actions fit within a class of action B4.1 Contracts, policies, and marketing and allocation plans for electric power, in Appendix B to Subpart D to Part 1021—Categorical Exclusions Applicable to Specific Agency Actions.

Dated: December 12, 2014.

Mark A. Gabriel,

Administrator.

[FR Doc. 2014–29638 Filed 12–17–14; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9920–65–OA]

Notification of a Closed Teleconference of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office is announcing a teleconference of the Chartered SAB to conduct a review of two draft reports of recommendations regarding the agency's 2013 and 2014 Scientific and Technological Achievement Awards (STAA). The Chartered SAB teleconference will be closed to the public.

DATES: The Chartered SAB teleconference date is Monday, January 26, 2015, from 2:00 p.m. to 3:30 p.m. (Eastern Time).

ADDRESSES: The Chartered SAB closed teleconference will take place via telephone only. General information about the SAB may be found on the SAB Web site at *http://www.epa.gov/sab.*

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Angela Nugent, Designated Federal Officer, by telephone: (202) 564–2218 or email at *nugent.angela@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), the EPA has determined that the chartered SAB quality review teleconference will be closed to the public. The purpose of the teleconference is for the chartered SAB to conduct a review of two draft reports of recommendations regarding the agency's 2013 and 2014 STAA. The Chartered SAB teleconference will be closed to the public.

Quality review is a key function of the chartered SAB. Draft reports prepared by SAB committees, panels, or work groups must be reviewed and approved by the chartered SAB before transmittal to the EPA Administrator. The chartered SAB makes a determination in a meeting consistent with FACA about all draft reports and determines whether the report is ready to be transmitted to the EPA Administrator.

At the teleconference, the chartered SAB will conduct reviews for two draft reports developed by an SAB committee charged with developing recommendations regarding the agency's STAA. The first draft report focuses on review of additional agency recommendations for the 2013 awards. Although the chartered SAB reviewed the agency's 2013 STAA nominations and provided advice regarding those nominations in January 2014 (for more information, see *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/2013%20STAA%20Review?OpenDocument*), the agency later identified additional nominations for SAB review. The second draft report focuses on the agency's 2014 STAA nominations (for more information, see *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/2014%20STAA%20Review?OpenDocument*).

The STAA awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. I have determined that the Chartered SAB quality review teleconference will be closed to the public because it is concerned with recommending employees deserving of awards. In making these draft recommendations, the EPA requires full and frank advice from the SAB. This advice will involve professional judgments on the relative

merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature, the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, is protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). Minutes of the Chartered SAB teleconference will be certified by the chair and retained in the public record.

Dated: December 11, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–29709 Filed 12–17–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1200]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S. C. 3501–3520), the Federal 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 PRA comments should be submitted on or before February 17, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1200.

Title: Rural Broadband Experiments and Post-Selection Review of Rural Broadband Experiment Winning Bidders.

Form Number: FCC Form 5610 and FCC Form 5620.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 500 respondents; 520 responses.

Estimated Time per Response: 5–10 hours.

Frequency of Response: One-time and occasional reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154 and 254.

Total Annual Burden: 2,700 hours.

Total Annual Cost: No cost(s).

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Information collected in FCC Form 5610 will be confidential until provisionally selected bidders are announced. At that time, the proposals submitted by provisionally selected bidders will be made publicly available. All other proposals submitted will remain confidential. Information collected in FCC Form 5620 will be confidential.

Needs and Uses: Under this information collection, the Commission proposes to collect information to determine applicants that will be selected to participate in the rural broadband experiments and whether provisionally selected bidders are technically and financially capable of receiving funding for rural broadband experiment projects. To aid in collecting this information regarding the rural broadband experiments, the Commission has created FCC Form 5610 and FCC Form 5620, which applicants will use to apply to participate in the rural broadband experiments. These forms will be available electronically through the Internet and electronic filing will be required. This information will be used to determine which applicants submit the most-cost effective proposals in each funding category and whether provisionally selected bidders have the technical and financial qualifications to successfully complete the proposed project within the required timeframes. The Communications Act of 1934, as amended requires the ''preservation and advancement of universal service.''

The information collection requirements reported under this collection are the result of various Commission actions to promote the Act's universal service goals, while minimizing waste, fraud, and abuse.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–29632 Filed 12–17–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0768, 3060–1013 and 3060–1108]

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 Communications 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 January 20, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the 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* 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 No.: 3060–0768.

Title: 28 GHz Band Segmentation Plan Amending the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5 to 30.0 GHz Frequency Band and to Establish Rules and Policies.

Form No.: None.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 17 respondents; 17 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; third-party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154 and 303.

Total Annual Burden: 34 hours.

Annual Cost Burden: $4,950.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting a revision of the information collection titled, ''28 GHz Band'' under OMB Control No. 3060–0768 from the Office of Management and Budget (OMB).

The purpose of the revision is to remove the information collection requirements that are contained under 47 CFR Sections 25.203, 25.250, 25.257 and 25.258 from OMB Control No. 3060–0768 because they were consolidated under OMB Control No. 3060–0678. The consolidation was approved by OMB on August 15, 2014.

The information collection requirements which remain in this collection require are as follows: (1) Local Multipoint Distribution Systems (LMDS) licensees to serve copies of their applications on all Non-Geostationary Mobile Satellite Service (NGSO/MSS) applicants (Section 101.147) and (2) NGSO/MSS feeder link earth stations must specify a set of geographic coordinates for location of these earth stations, 15 days after the release of a public notice announcing commencement of LMDS auctions (Section 101.147).

The information is used by the Commission and other applicants and/or licensees in the 28 GHz band to facilitate technical coordination of systems among applicants and/or licensees in the 28 GHz band. Without such information, the Commission could not implement the Commission's band plan.

Affected applicants and licensees are required to provide the requested information to the Commission and other third parties whenever they seek authority to provide service in the 28 GHz band. The frequency of filing is, in general, determined by the applicant or licensees. If this information is compiled less frequently or not filed in conjunction with our rules, applicants and licensees will not obtain the authorization necessary to provide telecommunications services. Furthermore, the Commission would not be able to carry out its mandate as required by statute and applicants and licensees would not be able to provide service effectively.

OMB Control No.: 3060–1013.

Title: Mitigation of Orbital Debris.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303, 308, 309 and 310.

Total Annual Burden: 30 hours.

Annual Cost Burden: $19,250.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as a revision after this 60-day comment period has ended in order to obtain the full three-year clearance from OMB.

The purpose of the revision is to remove the information collection requirements that are Section 47 CFR 25.114 from OMB Control No. 3060–1013 since they were consolidated in 3060–0678. OMB approved the consolidation on August 15, 2014.

Orbital debris consists of artificial objects orbiting the Earth that are not functional spacecraft. It consists of a wide range of non-functioning man-made objects that have been placed in the Earth's orbit, both accidentally and on purpose. Orbital debris consists of small objects such as paint flakes, discarded lens caps, ejected bolts and pieces of debris from exploded spacecraft and rocket bodies. Since human activity in space began, there has been a steady growth in the number and total mass of orbital debris. Once created, debris remains in orbit indefinitely, absent other forces. Growth in the orbital debris population may limit the usefulness of space for communications and other uses in the future by raising the costs and lowering the reliability of space based systems. Furthermore, the effects of collisions

involving orbital debris can be catastrophic and may cause significant damage to functional spacecraft or to persons or property on the surface of the Earth, if the debris re-enters the Earth's atmosphere in an uncontrolled manner.

The information collection requirements accounted for in this collection are necessary to mitigate the potential harmful effects of orbital debris accumulation. Without such information collection requirements, the growth in the orbital debris population may limit the usefulness of space for communications and other uses in the future by raising the costs and lowering the reliability of experimental and amateur systems. Furthermore, the effects of collisions involving orbital debris can be catastrophic and may cause significant damage to functional spacecraft or to persons or property on the surface of the Earth, if the debris re-enters the Earth's atmosphere in an uncontrolled manner.

OMB Control No.: 3060–1108.

Title: Consummation of Assignments and Transfers of Control of Authorization.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 163 respondents; 163 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 47 U.S.C. 154(i).

Total Annual Burden: 163 hours.

Annual Cost Burden: $48,900.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as a revision after this 60-day comment period has ended in order to obtain the full three-year clearance from OMB.

The purpose of the revision is to remove the information collection requirements that are contained in Section 47 CFR 25.119 from OMB Control No. 3060–1108. The information collection requirements were consolidated into collection 3060–0678. OMB approved the consolidation on August 15, 2014.

A consummation is a party's notification to the Commission that a transaction (assignment or transfer of control of authorization) has been completed. A consummation is applicable to all international telecommunications and satellite services, such as International High Frequency (IHF), Section 214 Applications (ITC), and Submarine Cable Landing Licenses (SCL).

Without this collection of information, the Commission would not have critical information such as a change in a controlling interest in the ownership of the licensee. The Commission would not be able to carry out its duties under the Communications Act and to determine the qualifications of applicants to provide international telecommunications service, including applicants that are affiliated with foreign entities, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. Furthermore, without this collection of information, the Commission would not be able to maintain effective oversight of U.S. providers of international telecommunications services that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign entities that have market power

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–29631 Filed 12–17–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PSHSB DA 14–1497]

The Public Safety and Homeland Security Bureau Seeks Comment on the Dismissal of Certain Proceedings as Dormant

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Public Safety and Homeland Security Bureau (PSHSB) seeks comment on whether certain long-pending petitions and requests identified in the Public Notice should be dismissed as dormant. PSHSB seeks to determine whether the long-term pending filings listed in the Attachment are candidates for dismissal because the items either have been abandoned, are no longer of interest to the filing party, or for which no further action is required or contemplated.

DATES: Comments are due thirty days after publication of this notice in the **Federal Register**. Reply comments are due forty-five days after publication of this notice in the **Federal Register**.

ADDRESSES: Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies. All filings should reference the docket number of this proceeding, PS Docket No. 14–1497.

FOR FURTHER INFORMATION CONTACT: David Ward of the Public Safety and Homeland Security Bureau, at (202) 418–2336, *david.ward@fcc.gov.*

Federal Communications Commission.

David Simpson,

Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2014–29666 Filed 12–17–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Notice of a Matter To Be Deferred From the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matter will be deferred from the ''Discussion Agenda'' at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, December 16, 2014, in the Board Room on the fourth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.:

Memorandum and resolution re: Regulatory Capital Rules, Liquidity Coverage Ratio, Proposed Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: December 15, 2014.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–29728 Filed 12–16–14; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:24 a.m. on Tuesday, December 16, 2014, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), Director Thomas J. Curry (Comptroller of the Currency), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: December 16, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–29763 Filed 12–16–14; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors met in open session at 10:02 a.m. on Tuesday, December 16, 2014, to consider the following matters:

Summary Agenda:

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Final Rule Integrating OTS and FDIC Flood Insurance Regulations.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed 2015 Corporate Operating Budget.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on December 11, 2014, was practicable.

The meeting was held in the Board Room temporarily located on the fourth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: December 16, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–29762 Filed 12–16–14; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011279–028.

Title: Latin America Agreement.

Parties: ABC Discussion Agreement; Caribbean Shipowners Association; Central America Discussion Agreement; Compania Libra de Navegacion Uruguay S.A.; Inland Shipping Service Association; Venezuelan Discussion Agreement; West Coast of South America Discussion Agreement; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would delete the Inland Shipping Service Association as a party to the Agreement and update the membership of various constituent agreements.

Agreement No.: 011435–015.

Title: APL/HLAG Space Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment updates the address of APL Co. Pte Ltd.

Agreement No.: 012220–002.

Title: Crowley/Seaboard Space Charter and Sailing Agreement.

Parties: Crowley Latin America Services, LLC; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add authority for the parties to agree on the terms and conditions of future sales of space to third parties and the application of revenue derived from such sales.

Agreement No.: 201157–004.

Title: USMX–ILA Master Contract between United States Maritime Alliance, Ltd. and International Longshoremen's Association.

Parties: United States Maritime Alliance, Ltd., on behalf of Management, and the International Longshoremen's Association, AFL–CIO.

Filing Parties: William M. Spelman, Esq.; The Lambos Firm; 29 Broadway, 9th Floor; New York, NY 10006 and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

Synopsis: The amendment reduces the overall assessment from $5.10 per ton to 55 cents per ton on cargo destined to or from the Caribbean Basin handled by ILA represented employees in the ports of Jacksonville, Southeast Florida, Tampa, Mobile, New Orleans and ports in the West Gulf.

By Order of the Federal Maritime Commission.

Dated: December 12, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–29566 Filed 12–17–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Gregory Jackson,* Detroit, Michigan, individually, and together as a group acting in concert with Roy S. Roberts, Bloomfield Hills, Michigan; to acquire voting shares of First Independence Corporation, and thereby indirectly acquire voting shares of First Independence Bank, both in Detroit, Michigan.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Michael K. Pearson and Keith W. Pearson,* both of Hobbs, New Mexico; collectively as a group acting in concert, to acquire voting shares of Lea County Bancshares, Inc., and thereby indirectly acquire voting shares of Lea County State Bank, both in Hobbs, New Mexico.

Board of Governors of the Federal Reserve System, December 15, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–29644 Filed 12–17–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–15–0879]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Information Collections to Advance State, Tribal, local, and Territorial (STLT) Governmental Agency System Performance, Capacity, and Program Delivery (OMB Control No. 0920–0879, Exp. (4/30/2017)—Revision—Office of the Director, Office for State, Tribal Local and Territorial Support (OSTLTS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the Department of Health and Human Services (HHS) is to help provide the building blocks that Americans need to live healthy, successful lives. As part of HHS, CDC's mission is to create the expertise, information, and tools that people and communities need to protect their health—through health promotion, prevention of disease, injury and disability, and preparedness for new health threats. CDC and HHS seek to accomplish its mission by collaborating with partners throughout the nation and the world to: Monitor health, detect and investigate health problems, conduct research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training.

CDC is requesting a three-year approval for a generic clearance to collect information related to domestic public health issues and services that affect and/or involve state, tribal, local and territorial (STLT) government entities. HHS, specifically the Office of the Assistant Secretary for Planning and Evaluation (ASPE), will be a new user for this generic clearance.

The respondent universe is comprised of STLT governmental staff or delegates acting on behalf of a STLT agency involved in the provision of essential public health services in the United States. Delegate is defined as a governmental or non-governmental agent (agency, function, office or individual) acting for a principal or submitted by another to represent or act on their behalf. The STLT agency is represented by a STLT entity or delegate with a task to protect and/or improve the public's health.

Information will be used to assess situational awareness of current public health emergencies; make decisions that affect planning, response and recovery activities of subsequent emergencies; fill CDC and HHS gaps in knowledge of programs and/or STLT governments that will strengthen surveillance, epidemiology, and laboratory science; improve CDC's support and technical assistance to states and communities. CDC and HHS will conduct brief data collections, across a range of public health topics related to essential public health services.

CDC estimates up to 30 data collections with STLT governmental staff or delegates, and 10 data

collections with local/county/city governmental staff or delegates will be conducted on an annual basis. It is also estimated that HHS/ASPE may submit up to three data collections with STLT governmental or staff delegates annually. Ninety-five percent of these data collections will be Web-based and five percent telephone, in-person, and focus groups. The total annualized burden of 54,000 hours is based on the following estimates.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
State, Territorial, or Tribal government staff ...	Web, telephone, in-person, focus group	800	30	1
Local/County/City government staff	Web, telephone, in-person, focus group	3,000	10	1

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–29627 Filed 12–17–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Permanency Innovations Initiative Evaluation: Phase 4.

OMB No.: 0970–0408.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) intends to collect additional data for an evaluation of the Permanency Innovations Initiative (PII). This 5-year initiative, funded by the Children's Bureau (CB) within ACF, is intended to build the evidence base for innovative interventions that enhance well-being and improve permanency outcomes for particular groups of children and youth who are at risk for long-term foster care and who experience the most serious barriers to timely permanency.

Data collection for the PII evaluation includes a number of components being launched at different points in time. Phase 1 (approved August 2012, OMB# 0970–0408) included data collection for a cross-site implementation evaluation and site-specific evaluations of two PII grantees (Washoe County, Nevada, and the State of Kansas). Phase 2 (approved August 2013) included data collection for two more PII grantees (Illinois DCFS and one of two interventions offered by the Los Angeles LGBTQ Center's Recognize Intervene Support Empower [RISE] project). Phase 3 (approved July 2014) included data collection for an evaluation of another PII grantee intervention and two additional cross-site PII studies. The grantee intervention was a second RISE intervention, the Care Coordination Team (CCT). The two PII cross-site studies were a cost study and an administrative data study.

Phase 4 will include data collection for another PII grantee, the California Department of Social Services' California Partnership for Permanency (CAPP) project.

Respondents: Spanish and English speaking Biological parents, legal guardians, foster parents (or caregivers).

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
CAPP Parent-Legal Guardian Self-Administered Questionnaire, Telephone Questionnaire	1205	402	1	.6	241
CAPP Caregiver Self-Administered Questionnaire, Telephone Questionnaire	2231	744	1	.6	446
CAPP annual burden hours	.....	.....	.....	.....	687

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Karl Koerper,

ACF/OPRE Reports Clearance Officer.

[FR Doc. 2014–29641 Filed 12–17–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Caring for Our Children Basics; Comment Request

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: As authorized by the 2014 Omnibus Act, ACF is requesting public comment on a voluntary set of minimum health and safety standards for early care and education settings titled, ''Caring for Our Children Basics.''

DATES: The deadline for receipt of comments is midnight, February 17, 2015.

ADDRESSES: Submit comments to *cfocbasics@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: High quality early care and education settings can have significant developmental benefits and other positive long term effects for children well into their adult years. At the same time, poor quality can result in unsafe environments that disregard children's basic physical and emotional needs leading to neglect, toxic stress, injury, or even death. It is not surprising that health and safety have been identified in multiple parent surveys as the most important factors to consider when evaluating child care options. For example, Shlay [1] found that, regardless of race/ethnicity, parents consistently prioritized health and safety over other quality features when selecting an early care arrangement.

From 2009 to 2011, 27 states made changes to licensing regulations for center-based care, and more than half made changes to licensing requirements for family child care homes. With respect to health and safety, the largest increase was in the number of states that have requirements regarding safe sleep practices (Office of Child Care's National Center on Child Care Quality Improvement & National Association for Regulatory Administration, 2013). A number of states have taken action to strengthen health and safety requirements and their enforcement in reaction to tragedies where children have been injured or died in child care (*e.g.,* Lexie's Law (Kansas, 2010) and Joshua's List (Oklahoma, 2010)).

[1] Shlay, A. (2010). African American, White and Hispanic child care preferences: A factorial survey analysis of welfare leavers by race and ethnicity. *Social Science Research, 39*(1), 125–141.

However, more work must be done to ensure children can learn, play, and grow in settings that are safe and secure.

Health and safety standards provide the foundation on which states and communities build a solid system of early care and education. Yet, states vary widely in the number and content of health and safety standards as well as how they monitor compliance with these standards. Some early care providers may receive no monitoring while others receive multiple visits. In addition, some early care and education providers who receive funding from multiple sources may receive repeated monitoring visits using conflicting standards. These sources can include Head Start, the Child Care and Development Fund, and the Child and Adult Care Food Program.

In testimony before the United States House Committee on Education and the Workforce, the Government Accountability Office (GAO) called attention to the multiple agencies that administer the federal investment in early learning and child care through multiple programs that sometimes have similar goals and are targeted to similar groups of children. They added that the existence of multiple programs can increase administrative costs associated with meeting varying requirements. We acknowledge that there are differences in health and safety requirements by funding stream (*e.g.,* Head Start, Child Care Development Fund, pre-Kindergarten) and early childhood program type (*e.g.,* center-based, home-based). While standards may vary depending on the length of the day and setting, there are some standards that must be in place to protect children no matter what type of variation in program.

The proposed model standards are called ''Caring for our Children Basics.'' They represent the minimum standards experts believe must be in place wherever children are regularly cared for in non-parental care settings. ''Caring for our Children Basics'' is the first attempt to reduce the conflicts and redundancy found in standards that are used to monitor early care and education settings. These are minimum standards and should not be construed to represent all standards that would need to be present to achieve the highest quality of care and early learning. For example, the caregiver training requirements outlined in these standards are designed only to prevent harm to children, not to ensure their optimal development and learning.

This call for public comment is to obtain information to help HHS as we further develop the voluntary set of minimum health and safety standards for early care and education settings. Because quality care cannot be achieved without consistent, basic health and safety practices in place, ACF seeks to provide a helpful reference for states and other entities as they work to improve their health and safety standards across program type. Our hope is that a voluntary common framework will assist child care licensing agencies in working towards and achieving a more consistent foundation for quality across the country upon which families can rely. In addition, ACF plans to use ''Caring for Our Children Basics'' in aligning health and safety efforts in early care and education at the federal level. Public input will be helpful in providing HHS with practical guidance to aid in the refinement and application of ''Caring for Our Children Basics.''

''Caring for Our Children Basics'' is based on ''Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, Third Edition.'' We would like to acknowledge the extensive work of the American Academy of Pediatrics, the American Public Health Association, the National Resource Center for Health and Safety in Child Care and Early Education, and the Maternal and Child Health Bureau, Department of Health and Human Services in developing these standards.

Caring for Our Children Basics

Staffing

1.2.0.2 Background Screening

Directors of early care and education centers and caregivers/teachers in large and small family child care homes should conduct a complete background screening before employing any staff member (in addition to any individuals residing in a family child care home over age 18). Consent to the background investigation should be required for employment consideration. The comprehensive background screening should include:

(a) The use of fingerprints for state checks of criminal history records;

(b) The use of fingerprints for checks of Federal Bureau of Investigation criminal history records;

(c) Clearance through the child abuse and neglect registry (if available); and

(d) Clearance through sex offender registries (if available).

1.4.1.1/1.4.2.3 Pre-serviceTraining/ Orientation

Before or during the first 3 months of employment, training and orientation should detail health and safety issues

for early care and education settings including, but not limited to, typical and atypical child development; first aid and CPR; safe sleep practices, including risk reduction of Sudden Infant Death Syndrome/Sudden Unexplained Infant Death (SIDS/SUID); infectious disease prevention; emergency preparedness; nutrition and age-appropriate feeding; medication administration; and care plan implementation for children with special health care needs. All directors or program administrators and caregivers/teachers should document receipt of training.

1.4.3.1 First Aid and CPR Training for Staff

All staff members involved in providing direct care to children should have up-to-date documentation of satisfactory completion of training in pediatric first aid and CPR skills as defined by the American Red Cross and American Heart Association. At least one staff person who has successfully completed this training should be in attendance at all times. Records of successful completion of training in pediatric first aid and CPR should be maintained in the personnel files of the facility.

1.4.5.2 Child Abuse and Neglect Education

Caregivers/teachers should be educated on child abuse and neglect prevention to establish child abuse and neglect prevention and recognition measures for the children, caregivers/teachers, and parents/guardians. The education should address physical, sexual, and psychological or emotional abuse and neglect. Caregivers/teachers are mandatory reporters of child abuse or neglect. Caregivers/teachers should be trained in compliance with their state's child abuse reporting laws.

Program Activities for Healthy Development

2.1.1.4 Monitoring Children's Development/Obtaining Consent for Screening

Programs should have a system in place for developmental and behavioral screening of all children at the beginning of a child's placement in the program, at least yearly thereafter, and as developmental concerns become apparent to staff and/or parents/guardians. This process should include parental/guardian consent and participation as well as connection to resources and support, if needed.

2.1.2.1/2.1.3.1 PersonalCaregiver/Teacher Relationships for Birth to Five-Year-Olds

Programs should practice relationship-based philosophies that promote consistency and continuity of care, especially for infants and toddlers. Early care and education programs should provide opportunities for each child to build emotionally secure relationships with a limited number of caregivers/teachers. Children with special health care needs may require additional specialists to promote health and safety and to support learning.

2.2.0.1 Methods of Supervision of Children

Caregivers/teachers should directly supervise infants, toddlers, and preschoolers by sight and hearing at all times, even when the children are going to sleep, napping, or sleeping; are beginning to wake up; or are indoors or outdoors. Developmentally appropriate child-to-staff ratios should be met during all hours of operation, and safety precautions for specific areas and equipment should be followed.

2.2.0.4 Supervision near Bodies of Water

Constant supervision should be maintained when any child is in or around water. During any swimming/wading activities where either an infant or a toddler is present, the ratio should always be one adult to one infant/toddler. Caregivers/teachers should ensure that all pools meet the Virginia Graeme Baker Pool and Spa Safety Act.

2.2.0.9 Prohibited Caregiver/Teacher Behaviors

The following behaviors should be prohibited in all early care and education settings:

(a) Use of corporal punishment;

(b) Isolating a child where a child cannot be supervised;

(c) Binding or tying to restrict movement or taping the mouth;

(d) Using or withholding food as a punishment or reward;

(e) Toilet learning/training methods that punish, demean, or humiliate a child;

(f) Any form of emotional abuse, including rejecting, terrorizing, extended ignoring, or corrupting a child;

(g) Any physical abuse or maltreatment of a child;

(h) Abusive, profane, sarcastic language or verbal abuse, threats, or derogatory remarks about the child or child's family;

(i) Any form of public or private humiliation; and

(j) Exclusion of physical activity/outdoor time as punishment.

Health Promotion and Protection

3.1.3.1 Active Opportunities for Physical Activity

Programs should demonstrate a commitment to active play for children, including infants and toddlers, indoors and outdoors every day.

3.1.4.1 Safe Sleep Practices and SIDS Risk Reduction

All staff, parents/guardians, volunteers, and others who care for infants in the early care and education setting should follow safe sleep practices as recommended by the Centers for Disease Control and Prevention (CDC) and the National Institute of Child Health and Human Development (NICHD). Cribs must be in compliance with current U.S. Consumer Product Safety Commission (CPSC) and ASTM International safety standards.

3.1.5.1 Routine Oral Hygiene Activities

Caregivers/teachers should promote the habit of regular tooth brushing. All children with teeth should brush or have their teeth brushed at least once during the hours the child is in an early care and education program.

3.2.1.4 Diaper Changing Procedure

The following diaper changing procedure should be posted in the changing area and followed to protect the health and safety of children and staff:

Step 1: Before bringing the child to the diaper changing area, perform hand hygiene and bring supplies to the diaper changing area.

Step 2: Carry the child to the changing table, keeping soiled clothing away from you and any surfaces you cannot easily clean and sanitize after the change. Always keep a hand on the child.

Step 3: Clean the child's diaper area.

Step 4: Remove the soiled diaper and clothing without contaminating any surface not already in contact with stool or urine.

Step 5: Put on a clean diaper and dress the child.

Step 6: Wash the child's hands and return the child to a supervised area.

Step 7: Clean and disinfect the diaper-changing surface. Dispose of the disposable paper liner used on the diaper changing surface in a plastic-lined, hands-free, covered can. If clothing was soiled, securely tie the plastic bag used to store the clothing and send home.

Step 8: Perform hand hygiene and record the diaper change, diaper contents, and/or any problems.

Caregivers/teachers should never leave a child unattended on a table or countertop. A safety strap or harness should not be used on the diaper changing table.

3.2.2.1 Situations that Require Hand Hygiene

All staff, volunteers, and children should abide by the following procedures for hand washing, as defined by the CDC:

A. Upon arrival for the day, after breaks, or when moving from one group to another;

B. Before and after:

- Preparing food or beverages;
- Eating, handling food, or feeding a child;
- Giving medication or applying a medical ointment or cream in which a break in the skin (*e.g.,* sores, cuts, or scrapes) may be encountered;
- Playing in water (including swimming) that is used by more than one person;
- Diapering.

C. After:

- Using the toilet or helping a child use a toilet;
- Handling bodily fluid (mucus, blood, vomit);
- Handling animals or cleaning up animal waste;
- Playing in sand, on wooden play sets, and outdoors;
- Cleaning or handling the garbage.

Situations or times that children and staff should perform hand hygiene should be posted in all food preparation, hand hygiene, diapering, and toileting areas.

3.2.3.4 Prevention of Exposure to Blood and Body Fluids

Early care and education programs should adopt the use of Standard Precautions, developed by the CDC, to handle potential exposure to blood and other potentially infectious fluids. Caregivers and teachers are required to be educated regarding Standard Precautions before beginning to work in the program and annually thereafter. Training should comply with requirements of the Occupational Safety and Health Administration.

3.3.0.1 Routine Cleaning, Sanitizing, and Disinfecting

Programs should follow a routine schedule of cleaning, sanitizing, and disinfecting. Cleaning, sanitizing, and disinfecting products should not be used in close proximity to children, and adequate ventilation should be maintained during use.

3.4.1.1 Use of Tobacco, Alcohol, and Illegal Drugs

Tobacco use, alcohol, and illegal drugs should be prohibited on the premises (both indoor and outdoor environments) and in any vehicles used by the program at all times. Caregivers and teachers should not use tobacco, alcohol, or illegal drugs off the premises during the early care and education program's paid time, including break time.

3.4.3.1 Emergency Procedures

Programs should have a procedure for responding to situations when an immediate emergency medical response is required. Child-to-staff ratio should be maintained, and staff may need to be called in to maintain the required ratio. Programs should develop contingency plans for emergencies or disaster situations when it may not be possible to follow standard emergency procedures. All staff should be trained to manage an emergency until emergency medical care becomes available.

3.4.4.1 Recognizing and Reporting Suspected Child Abuse, Neglect, and Exploitation

Because caregivers/teachers are mandated reporters of child abuse and neglect, each program should have a written policy for reporting child abuse and neglect. The program should report to the child abuse reporting hotline, the Department of Social Services, child protective services, or the police as required by state and local laws, in any instance where there is reasonable cause to believe that child abuse and neglect has occurred.

3.4.4.3 Preventing and Identifying Shaken Baby Syndrome/Abusive Head Trauma

All programs should have a policy and procedure to identify and prevent shaken baby syndrome/abusive head trauma. All caregivers/teachers who are in direct contact with children, including substitute caregivers/teachers and volunteers, should receive training on preventing shaken baby syndrome/abusive head trauma; recognition of potential signs and symptoms of shaken baby syndrome/abusive head trauma; strategies for coping with a crying, fussing, or distraught child; and the development and vulnerabilities of the brain in infancy and early childhood.

3.4.5.1 Sun Safety Including Sunscreen

Caregivers/teachers should ensure sun safety for themselves and children under their supervision by keeping infants younger than 6 months out of direct sunlight, limiting sun exposure when UV rays are strongest, wearing shatter resistant sunglasses with UV protection and hats, and applying sunscreen. Written permission from the parent/guardian for use of sunscreen should be required, and manufacturer instructions should be followed.

3.4.6.1 Strangulation Hazards

Strings and cords on toys and window coverings long enough to encircle a child's neck should not be accessible to children in early care and education programs.

3.5.0.1 Care Plan for Children with Special Health Care Needs

Children with special health care needs are defined as

> . . . those who have or are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.[2]

Any child who meets these criteria in an early care and education setting should have an up-to-date Routine and Emergent Care Plan, completed by their primary care provider with input from parents/guardians, included in their on-site health record. The child care health consultant should be involved to ensure adequate information, training, and monitoring is available for early care and education staff.

3.6.1.1 Inclusion/Exclusion/Dismissal of Children

Staff should notify the parent/guardian when children develop new signs or symptoms of illness. Parent/guardian notification should be immediate for emergency or urgent issues. Staff should notify parents/guardians of children who have symptoms that require exclusion, and parents/guardians should remove children from the early care and education setting as soon as possible. For children whose symptoms do not require exclusion, verbal or written notification to the parent/guardian at the end of the day is acceptable. Most conditions that require exclusion do not require a primary care provider visit before re-entering care.

When a child becomes ill but does not require immediate medical help, a determination should be made regarding whether the child should be sent home. The caregiver/teacher should determine if the illness:

[2] McPherson M., Arango P., Fox H., Lauver C., McManus M., Newacheck P., . . . Strickland B. (1998). A new definition of children with special health care needs. Pediatrics, *102*(1), 137–140.

(a) Prevents the child from participating comfortably in activities;

(b) Results in a need for care that is greater than the staff can provide without compromising the health and safety of other children;

(c) Poses a risk of spread of harmful diseases to others;

(d) Causes a fever (temperature above 101 °F [38.3 °C] orally, or 100 °F [37.8 °C] or higher taken axillary [armpit]) and behavior change or other signs and symptoms (*e.g.,* sore throat, rash, vomiting, diarrhea). An unexplained temperature above 100 °F (37.8 °C) (armpit) in a child younger than 6 months should be medically evaluated. Any infant younger than 2 months of age with fever should get urgent medical attention.

If any of the above criteria are met, the child should be removed from direct contact with other children and monitored and supervised by a staff member known to the child until dismissed to the care of a parent/guardian or primary care provider. The local or state health department will be able to provide specific guidelines for exclusion.

3.6.1.4 Infectious Disease Outbreak Control

During the course of an identified outbreak of any reportable illness at the program, a child or staff member should be excluded if the health department official or primary care provider suspects that the child or staff member is contributing to transmission of the illness, is not adequately immunized when there is an outbreak of a vaccine-preventable disease, or the circulating pathogen poses an increased risk to the individual. The child or staff member should be readmitted when the official or primary care provider who made the initial determination decides that the risk of transmission is no longer present.

3.6.3.1/3.6.3.2 Medication Administration and Storage

The administration of medicines at the facility should be limited to:

(a) Prescription or non-prescription medication (over-the-counter) ordered by the prescribing health professional for a specific child with written permission of the parent/guardian. Written orders from the prescribing health professional should specify medical need, medication, dosage, and length of time to give medication;

(b) Labeled medications brought to the early care and education facility by the parent/guardian in the original container (with a label that includes the child's name; date filled; prescribing clinician's name; pharmacy name and phone number; dosage/instructions; relevant warnings as well as specific, legible instructions for administration; storage; and disposal).

Programs should never administer a medication that is prescribed for one child to another child. Documentation that the medicine/agent is administered to the child as prescribed is required. Medication should not be used beyond the date of expiration. Unused medications should be returned to the parent/guardian for disposal.

All medications, refrigerated or unrefrigerated, should:

(a) Have child-resistant caps;

(b) Be kept in an organized fashion;

(c) Be stored away from food;

(d) Be stored at the proper temperature;

(e) Be completely inaccessible to children.

3.6.3.3 Training of Caregivers/Teachers to Administer Medication

Any caregiver/teacher who administers medication should complete a standardized training course that includes skill and competency assessment in medication administration. The trainer in medication administration should be a licensed health professional. The course should be repeated according to state and/or local regulation. At a minimum, skill and competency should be monitored annually or whenever an administration error occurs.

Nutrition and Food Service

4.2.0.3 Use of U.S. Department of Agriculture (USDA), Child and Adult Care Food Program (CACFP) Guidelines

All meals and snacks and their preparation, service, and storage should meet the requirements for meals of the child care component of the USDA, CACFP, and 7 CFR 226.20.

4.2.0.6 Availability of Drinking Water

Clean, sanitary drinking water should be readily available in indoor and outdoor areas, throughout the day.

4.2.0.10 Care for Children with Food Allergies

Each child with a food allergy should have a care plan prepared for the facility by the child's primary care provider and parents/guardians, to include:

(a) Written instructions regarding the food(s) to which the child is allergic and steps to be taken to avoid that food;

(b) A detailed treatment plan to be implemented in the event of an allergic reaction, including the names, doses, and methods of prompt administration of any medications. The plan should include specific symptoms that would indicate the need to administer one or more medications.

Based on the child's care plan, the child's caregivers/teachers should receive training for, demonstrate competence in, and implement measures for:

(a) Preventing exposure to the specific food(s) to which the child is allergic;

(b) Recognizing the symptoms of an allergic reaction;

(c) Treating allergic reactions.

The written child care plan, a mobile phone, and the proper medications for appropriate treatment if the child develops an acute allergic reaction should be routinely carried on field trips or transport out of the early care and education setting.

The program should notify the parents/guardians immediately of any suspected allergic reactions, as well as the ingestion of or contact with the problem food even if a reaction did not occur. The program should contact the emergency medical services system immediately whenever epinephrine has been administered.

Individual child's food allergies should be posted prominently in the classroom and/or wherever food is served.

4.3.1.3 Preparing, Feeding, and Storing Human Milk

Programs should develop and follow procedures for the preparation and storage of expressed human milk that ensures the health and safety of all infants, as outlined by the CDC, and prohibits the use of infant formula for a breastfed infant without parental consent. The bottle or container should be properly labeled with the infant's full name and date.

4.3.1.5 Preparing, Feeding, and Storing Infant Formula

Programs should develop and follow procedures for the preparation and storage of infant formula that ensures the health and safety of all infants. Formula provided by parents/guardians or programs should come in factory-sealed containers. The caregiver/teacher should always follow manufacturer's instructions for mixing and storing of any formula preparation. If instructions are not readily available, caregivers/teachers should obtain information from the World Health Organization's Safe Preparation, Storage and Handling of Powdered Infant Formula Guidelines. Bottles of prepared or ready-to-feed formula should be labeled with the child's full name and time and date of preparation.

4.3.1.9 Warming Bottles and Infant Foods

Bottles and infant foods can be served cold from the refrigerator and do not have to be warmed. If a caregiver/teacher chooses to warm them, bottles should be warmed under running, warm tap water or by placing them in container of warm water. Bottles should never be warmed in microwaves.

4.5.0.10 Foods that Are Choking Hazards

Caregivers/teachers should not offer foods that are associated with young children's choking incidents to children under 4 years of age (round, hard, small, thick and sticky, smooth, compressible or dense, or slippery). Food for infants should be cut into pieces ¼ inch or smaller, food for toddlers should be cut into pieces ½ inch or smaller to prevent choking. Children should be supervised while eating, to monitor the size of food and that they are eating appropriately.

4.8.0.1 Food Preparation Area Access

Infants and toddlers should not have access to the kitchen in early care and education programs. Access by older children to the kitchen, or areas where hot food is prepared, should be permitted only when supervised by adults who are qualified to follow sanitation and safety procedures.

4.9.0.1 Compliance with U.S. Food and Drug Administration (FDA) Food Code and State and Local Rules

The program should conform to applicable portions of the FDA Food Code and all applicable state and local food service rules and regulations for centers and family child care homes regarding safe food protection and sanitation practices. If the federal code and local regulations are in conflict, the health authority with jurisdiction should determine which requirement the facility must meet.

Facilities, Supplies, Equipment, Environmental Health

5.1.1.2 Inspection of Buildings

Existing and/or newly constructed, renovated, remodeled, or altered buildings should be inspected by a public inspector to ensure compliance with applicable building and fire codes before the building can be made accessible to children.

5.1.1.3 Compliance with Fire Prevention Code

Every 12 months, the early care and education facility should obtain written documentation to submit to the regulatory licensing authority that the facility complies with a state-approved or nationally recognized Fire Prevention Code, such as the National Fire Protection Association (NFPA) 1: Fire Code.

5.1.1.5 Environmental Audit of Site Location [3]

An environmental audit should be conducted before construction of a new building; renovation or occupation of an older building; or after a natural disaster, to properly evaluate and, where necessary, remediate or avoid sites where children's health could be compromised. The environmental audit should include assessments of:

(a) Potential air, soil, and water contamination on early care and education facility sites and outdoor play spaces;

(b) Potential toxic or hazardous materials in building construction; and

(c) Potential safety hazards in the community surrounding the site.

A written environmental audit report that includes any remedial action taken should be kept on file.

5.2.4.2 Safety Covers and Shock Protection Devices for Electrical Outlets

All accessible electrical outlets should be ''tamper-resistant electrical outlets'' that contain internal shutter mechanisms to prevent children from sticking objects into receptacles. In settings that do not have ''tamper-resistant electrical outlets,'' outlets should have ''safety covers'' that are attached to the electrical outlet by a screw or other means to prevent easy removal by a child.

5.2.4.4 Location of Electrical Devices near Water

No electrical device or apparatus accessible to children should be located so it could be plugged into an electrical outlet while a person is in contact with a water source, such as a sink, tub, shower area, water table, or swimming pool.

5.2.8.1 Integrated Pest Management

Programs should adopt an integrated pest management program to ensure long-term, environmentally sound pest suppression through a range of practices including pest exclusion, sanitation and clutter control, and elimination of conditions that are conducive to pest infestations.

5.2.9.1 Use and Storage of Toxic Substances

All toxic substances should be used as recommended by the manufacturer and stored in the original labeled containers. All toxic substances should be inaccessible to children. The telephone number for the poison center should be posted in a location where it is readily available in emergency situations.

5.2.9.5 Carbon Monoxide Detectors

Programs should meet state or local laws regarding carbon monoxide detectors, including circumstances when detectors are necessary. Detectors should be tested monthly. Batteries should be changed at least yearly. Detectors should be replaced at least every 5 years.

5.3.1.1/5.5.0.6/5.5.0.7 Safety of Equipment, Materials, and Furnishings

Equipment, materials, furnishings, and play areas should be sturdy, safe, in good repair, and meet the recommendations of the CPSC. Programs should attend to, including, but not limited to, the following safety hazards:

(a) Openings that could entrap a child's head or limbs;

(b) Elevated surfaces that are inadequately guarded;

(c) Lack of specified surfacing and fall zones under and around climbable equipment;

(d) Mismatched size and design of equipment for the intended users;

(e) Insufficient spacing between equipment;

(f) Tripping hazards;

(g) Components that can pinch, sheer, or crush body tissues;

(h) Equipment that is known to be of a hazardous type;

(i) Sharp points or corners;

(j) Splinters;

(k) Protruding nails, bolts, or other parts that could entangle clothing or snag skin;

(l) Loose, rusty parts;

(m) Hazardous small parts that may become detached during normal use or reasonably foreseeable abuse of the equipment and that present a choking, aspiration, or ingestion hazard to a child;

(n) Strangulation hazards (*e.g.,* straps, strings, etc.);

(o) Flaking paint;

(p) Paint that contains lead or other hazardous materials; and

(q) Tip-over hazards, such as chests, bookshelves, and televisions.

Plastic bags, matches, candles, and lighters should not be accessible to children.

5.4.5.2 Cribs

Before purchase and use, cribs must be in compliance with current CPSC and ASTM International safety

[3] Family Child Care is exempt.

standards that include ASTM F1169–10a Standard Consumer Safety Specification for Full-Size Baby Cribs, F406–10b Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, or the CPSC 16 CFR 1219, 1220, and 1500—Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Final Rule.

As soon as a child can stand up, the mattress should be adjusted to its lowest position. When an infant is able to reach crib latches or potentially climb out of a crib, they should be transitioned to a different sleeping environment (such as a cot or sleeping mat). Children should never be kept in their crib by placing, tying, or wedging various fabrics, mesh, or other strong coverings over the top of the crib.

Cribs intended for evacuation purpose should be designed for carrying up to five non-ambulatory children less than 2 years of age to a designated evacuation area in the event of fire or other emergency.

Staff should only use cribs for sleep purposes and should ensure that each crib is a safe sleep environment as defined by the CDC and the NICHD. No child of any age should be placed in a crib for a time-out or for disciplinary reasons. Cribs should be placed away from window blinds or draperies.

5.5.0.8 Firearms

Early care and education programs should not have firearms, pellet or BB guns, darts, cap pistols, stun guns, paint ball guns, or objects manufactured for play as toy guns on the premises at any time. If present in a family child care home, parents should be notified and these items should be unloaded, equipped with child protective devices, and kept under lock and key with the ammunition locked separately in areas inaccessible to the children. Parents/guardians should be informed about this policy.

Play Areas/Playgrounds and Transportation

6.1.0.6/6.1.0.8/6.3.1.1 Location of Play Areas near Bodies of Water/ Enclosures for Outdoor Play Areas/Enclosure of Bodies of Water

The outdoor play area should be enclosed with a fence or natural barriers. Fences and barriers should not prevent the observation of children by caregivers/teachers. If a fence is used, it should conform to applicable local building codes in height and construction. Fence posts should be outside the fence where allowed by local building codes. These areas should have at least two exits, with at least one being remote from the buildings.

Outside play areas should be free from bodies of water. If present, all water hazards should be enclosed with a fence that is 4 to 6 feet high or higher and comes within 3½ inches of the ground. Gates should be equipped with self-closing and positive self-latching closure mechanisms that are high enough or of a type such that children cannot open it. The openings in the fence and gates should be no larger than 3½ inches. The fence and gates should be constructed to discourage climbing. Play areas should be secured against inappropriate use when the facility is closed.

6.2.3.1 Prohibited Surfaces for Placing Climbing Equipment

Equipment used for climbing should not be placed over, or immediately next to, hard surfaces such as asphalt, concrete, dirt, grass, or flooring covered by carpet or gym mats not intended for use as surfacing for climbing equipment.

All pieces of playground equipment should be placed over a shock-absorbing material that is either the unitary or the loose-fill type, as defined by the CPSC guidelines and ASTM International Standards ASTM F1292–13 and ASTM F2223–10, extending at least 6 feet beyond the perimeter of the stationary equipment. Organic materials that support colonization of molds and bacteria should not be used. This standard applies whether the equipment is installed outdoors or indoors.

6.2.5.1 Inspection of Indoor and Outdoor Play Areas and Equipment

The indoor and outdoor play areas and equipment should be inspected daily for basic health and safety, including, but not limited to:

(a) Missing or broken parts;

(b) Protrusion of nuts and bolts;

(c) Rust and chipping or peeling paint;

(d) Sharp edges, splinters, and rough surfaces;

(e) Stability of handholds;

(f) Visible cracks;

(g) Stability of non-anchored large play equipment (*e.g.,* playhouses);

(h) Wear and deterioration.

Observations should be documented and filed, and the problems corrected before the playground is used by children.

6.3.2.1 Lifesaving Equipment

Each swimming pool more than 6 feet in width, length, or diameter should be provided with a ring buoy and rope, a rescue tube, or a throwing line and a shepherd's hook that will not conduct electricity. This equipment should be long enough to reach the center of the pool from the edge of the pool, should be kept in good repair, and should be stored safely and conveniently for immediate access. Caregivers/teachers should be trained on the proper use of this equipment. Children should be familiarized with the use of the equipment based on their developmental level.

6.3.5.2 Water in Containers

Bathtubs, buckets, diaper pails, and other open containers of water should be emptied immediately after use.

6.5.1.2 Qualifications for Drivers

In addition to meeting the general staff background check standards, any driver or transportation staff member who transports children for any purpose should be at least 21 years of age and have:

(a) A valid driver's license that authorizes the driver to operate the type of vehicle being driven;

(b) A safe driving record for more than 5 years, with no crashes where a citation was issued, as evidenced by the state Department of Motor Vehicles records;

(c) No tobacco, alcohol, or drug use before or while driving;

(d) No medical condition that would compromise driving, supervision, or evacuation capability;

(e) Valid pediatric CPR and first aid certificate if transporting children alone.

The driver's license number and date of expiration, vehicle insurance information, and verification of current state vehicle inspection should be on file in the facility.

6.5.2.2 Child Passenger Safety

When children are driven in a motor vehicle other than a bus, all children should be transported only if they are restrained in a developmentally appropriate car safety seat, booster seat, seat belt, or harness that is suited to the child's weight, age, and/or psychological development in accordance with state and federal laws and regulations. The child should be securely fastened, according to the manufacturer's instructions. The child passenger restraint system should meet the federal motor vehicle safety standards contained in 49 CFR 571.213 and carry notice of compliance. Child passenger restraint systems should be installed and used in accordance with the manufacturer's instructions and should be secured in back seats only.

Car safety seats should be replaced if they have been recalled, are past the manufacturer's ''date of use'' expiration date, or have been involved in a crash

that meets the U.S. Department of Transportation crash severity criteria or the manufacturer's criteria for replacement of seats after a crash.

6.5.2.4 Interior Temperature of Vehicles

The interior of vehicles used to transport children for field trips and out-of-program activities should be maintained at a temperature comfortable to children. All vehicles should be locked when not in use, head counts of children should be taken after transporting to prevent a child from being left unintentionally in a vehicle, and children should never be intentionally left in a vehicle unattended.

6.5.3.1 Passenger Vans [4]

Early care and education programs that provide transportation for any purpose to children, parents/guardians, staff, and others should not use 15-passenger vans whenever possible. Caregivers/teachers should be knowledgeable about the laws of the state(s) in which their vehicles, including passenger vans, will be registered and used.

Infectious Disease

7.2.0.1 Immunization Documentation

Programs should require that all parents/guardians of enrolled children provide written documentation of receipt of immunizations appropriate for each child's age. Infants, children, and adolescents should be immunized as specified in the ''Recommended Immunization Schedules for Persons Aged 0 Through 18 Years,'' developed by the Advisory Committee on Immunization Practices of the CDC, the American Academy of Pediatrics, and the American Academy of Family Physicians. Children whose immunizations are not up-to-date or have not been administered according to the recommended schedule should receive the required immunizations, unless contraindicated or for legal exemptions.

7.2.0.2 Unimmunized Children

If immunizations have not been or are not to be administered because of a medical condition, a statement from the child's primary care provider documenting the reason why the child is temporarily or permanently medically exempt from the immunization requirements should be on file. If immunizations are not to be administered because of the parents'/guardians' religious or philosophical beliefs, a legal exemption with notarization, waiver, or other state-specific required documentation signed by the parent/guardian should be on file. The parent/guardian of a child who has not received the age-appropriate immunizations prior to enrollment and who does not have documented medical, religious, or philosophical exemptions from routine childhood immunizations should provide documentation of a scheduled appointment or arrangement to receive immunizations. An immunization plan and catch-up immunizations should be initiated upon enrollment and completed as soon as possible.

If a vaccine-preventable disease to which children are susceptible occurs in the facility and potentially exposes the unimmunized children who are susceptible to that disease, the health department should be consulted to determine whether these children should be excluded for the duration of possible exposure or until the appropriate immunizations have been completed. The local or state health department will be able to provide guidelines for exclusion requirements.

7.2.0.3 Immunization of Caregivers/Teachers

Caregivers/teachers should be current with all immunizations routinely recommended for adults by the Advisory Committee on Immunization Practices of the CDC as shown in the ''Recommended Adult Immunization Schedule'' in the following categories:

(a) Vaccines recommended for all adults who meet the age requirements and who lack evidence of immunity (*i.e.,* lack documentation of vaccination or have no evidence of prior infection); and

(b) Recommended if a specific risk factor is present.

If a staff member is not appropriately immunized for medical, religious, or philosophical reasons, the early care and education facility should require written documentation of the reason.

If a vaccine-preventable disease to which adults are susceptible occurs in the facility and potentially exposes the unimmunized adults who are susceptible to that disease, the health department should be consulted to determine whether these adults should be excluded for the duration of possible exposure or until the appropriate immunizations have been completed. The local or state health department will be able to provide guidelines for exclusion requirements.

Policies

9.2.4.1 Written Plan and Training for Handling Urgent Medical Care or Threatening Incidents

The program should have a written plan for reporting and managing any incident or unusual occurrence that is threatening to the health, safety, or welfare of the children, staff, or volunteers. Staff training procedures should also be included. The management, documentation, and reporting of the following types of incidents should be addressed:

(a) Lost or missing child;

(b) Suspected maltreatment of a child (also see state's mandates for reporting);

(c) Suspected sexual, physical, or emotional abuse of staff, volunteers, or family members occurring while they are on the premises of the program;

(d) Injuries to children requiring medical or dental care;

(e) Illness or injuries requiring hospitalization or emergency treatment;

(f) Mental health emergencies;

(g) Health and safety emergencies involving parents/guardians and visitors to the program;

(h) Death of a child or staff member, including a death that was the result of serious illness or injury that occurred on the premises of the early care and education program, even if the death occurred outside of early care and education hours;

(i) The presence of a threatening individual who attempts or succeeds in gaining entrance to the facility.

9.2.4.3 Disaster Planning, Training and Communication

Early care and education programs should consider how to prepare for and respond to emergency or natural disaster situations that may require evacuation, lock-down, or shelter-in-place and have written plans, accordingly. The following topics should be addressed, including, but not limited to, regularly scheduled practice drills, procedures for notifying and updating parents, and the use of the daily class roster(s) to check attendance of children and staff during an evacuation or drill when gathered in a safe space after exit and upon return to the program.

9.2.4.7 Sign-In/Sign-Out System

Programs should have a sign-in/sign-out system to track those who enter and exit the facility. The system should include name, contact number, relationship to facility (*e.g.,* parent/guardian, vendor, guest, etc.), and recorded time in and out.

[4] Family Child Care is exempt.

9.2.4.8 Authorized Persons To Pick Up Child

Children may only be released to adults authorized by parents or legal guardians and whose identity has been verified by photo identification. Names, addresses, and telephone numbers of persons authorized to take a child under care out of the facility should be obtained during the enrollment process and regularly reviewed, along with clarification/documentation of any custody issues/court orders. The legal guardian(s) of the child should be established and documented at this time.

9.4.1.12 Record of Valid License, Certificate, or Registration of Facility

Every facility should hold a valid license, certificate, or documentation of registration prior to operation as required by the local and/or state statute.

9.4.2.1 Contents of Child Records

Programs should maintain a confidential file for each child in one central location on-site and should be immediately available to the child's caregivers/teachers (who should have parental/guardian consent for access to records), the child's parents/guardians, and the licensing authority upon request. The file for each child should include the following:

(a) Pre-admission enrollment information;

(b) Admission agreement signed by the parent/guardian at enrollment;

(c) Initial and updated health care assessments, completed and signed by the child's primary care provider, based on the child's most recent well care visit;

(d) Health history completed by the parent/guardian at admission;

(e) Medication record;

(f) Authorization form for emergency medical care;

(g) Written informed consent forms signed by the parent/guardian allowing the facility to share the child's health records with other service providers.

10.4.2.1 Frequency of Inspections for Child Care Centers, Large Family Child Care Homes, and Small Family Child Care Homes

The licensing inspector or monitoring staff should make an onsite inspection to measure compliance with licensing/regulatory rules prior to issuing an initial license and at least two inspections each year to each center and large and small family child care home thereafter. At least one of the inspections should be unannounced, and more if they are needed for the facility to achieve satisfactory compliance or if the facility is closed at any time. Sufficient numbers of licensing inspectors should be hired to provide adequate time visiting and inspecting programs to ensure compliance with regulations.

The number of inspections should not include those inspections conducted for the purpose of investigating complaints. Complaints should be investigated promptly, based on severity of the complaint. States are encouraged to post the results of licensing inspections, including complaints, on the Internet for parent and public review. Parents/guardians should be provided easy access to the licensing rules and made aware of how to report complaints to the licensing agency.

Dated: December 12, 2014.

Linda K. Smith,

Deputy Assistant Secretary for Early Childhood Development, Administration for Children and Families, U.S. Department of Health and Human Services.

[FR Doc. 2014–29649 Filed 12–17–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0996]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 20, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0389. Also include the FDA 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, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review—(OMB Control Number 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the FD&C Act. The guidance discusses collections of information that are specified under section 506 of the FD&C Act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving the collection of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the Agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the FD&C Act, an applicant who seeks fast track designation is required to submit a request to the Agency showing that the drug product: (1) Is intended for a serious or life-threatening condition and (2) has the potential to address an

unmet medical need. The Agency expects that information to support a designation request will have been gathered under existing provisions of the FD&C Act, the PHS Act, or the implementing regulations. If such information has already been submitted to the Agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the Agency makes a fast track designation, a sponsor or applicant may submit a premeeting package that may include additional information supporting a request to participate in certain fast track programs. The premeeting package serves as background information for the meeting and should support the intended objectives of the meeting. As with the request for fast track designation, the Agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the FD&C Act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (*i.e.,* foreign studies) and information to support a request for accelerated approval. If such information has already been submitted to FDA, the information may be summarized in the premeeting package. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the FD&C Act, a sponsor must submit sufficient clinical data for the Agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that are not required under section 506(c) of the FD&C Act or any other provision of the FD&C Act.

All forms referred to in the guidance have current OMB approval: Forms FDA 1571 (OMB control number 0910–0014), 356h (OMB control number 0910–0338), and 3397 (OMB control number 0910–0297).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the FD&C Act. The Agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research is approximately 81, and the number of requests received is approximately 115 annually. FDA estimates that the number of hours needed to prepare a request for fast track designation is approximately 60 hours per request.

Not all requests for fast track designation may meet the statutory standard. Of the requests for fast track designation made per year, the Agency granted approximately 100 requests from 81 respondents, and for each of these granted requests a premeeting package was submitted to the Agency. FDA estimates that the preparation hours are approximately 100 hours per premeeting package.

In the **Federal Register** of August 1, 2014 (79 FR 44780), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance for industry: Fast track drug development programs: Designation, development, and application review	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Designation Requests	81	1.42	115	60	6,900
Premeeting Packages	81	1.09	88	100	8,800
Total					15,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 12, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29607 Filed 12–17–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0313]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff on Meetings With the Office of Orphan Products Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 20, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title, ''Draft Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff on Meetings With the Office of Orphan Products Development.'' Also include the FDA 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, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance. Draft Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff on Meetings With the Office of Orphan Products Development—(OMB Control Number 0910–NEW).

FDA is issuing a draft guidance on the procedures for requesting meetings with the Office of Orphan Products Development (OOPD) on issues related to orphan drug designation requests, Humanitarian Use Device (HUD) designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related topics of concern. The draft guidance describes procedures for requesting, scheduling, conducting, and documenting such meetings.

The draft guidance describes three collections of information: (1) The submission of a meeting request (for informal and formal meetings), (2) the submission of a meeting package (for formal meetings), and (3) the submission of draft meeting minutes (for formal and certain informal meetings). These collections of information will be used by the Agency to schedule and prepare for meetings on the issues described previously in this document and will provide for more productive meetings with stakeholders. This draft guidance refers to previously approved collections of information found in FDA regulations. Agency regulations at part 316 (21 CFR part 316) describe information that should be submitted in support of an orphan drug designation request. The information collection provisions of part 316 have been approved under OMB control number 0910–0167. Agency regulations at § 814.102 (21 CFR 814.102) describe information that should be submitted in support of a HUD designation request.

The information collection provisions of § 814.102 have been approved under OMB control number 0910–0332.

A. Request for a Meeting

Under the draft guidance, a stakeholder interested in meeting with OOPD should submit a meeting request:

- For specific designation requests or grant applications, by emailing the identified point of contact for the designation request or grant application with the subject heading ''Meeting Request''; or
- For other issues, by emailing the general OOPD inbox at *orphan@fda.hhs.gov* with the subject heading ''Meeting Request'' or by emailing the point of contact for each OOPD Program Area listed in the ''Contact FDA'' section of the OOPD's Web site (*http://www.fda.gov/orphan*), again with the subject heading ''Meeting Request.'' In the draft guidance, FDA recommends that the meeting request, at a minimum, include (1) a brief statement of the meeting purpose, (2) whether the stakeholder prefers an informal or formal meeting, (3) suggested dates and times for the meeting, (4) preferred format of the meeting, and (5) the email address(es) to which OOPD should send a response to the meeting request (if different from the email address from which the request was sent) and telephone number for the primary contact for the stakeholder. Before scheduling a meeting, OOPD may ask the stakeholder for more information about the proposed meeting to help determine whether an informal or formal meeting is most appropriate and who from OOPD should attend. For informal meetings, the information in the meeting request may suffice, although OOPD may ask for supplemental information via email or telephone.

B. Meeting Package

If a formal meeting is scheduled, FDA recommends that stakeholders submit a meeting package to OOPD at least 2 weeks before the meeting. Stakeholders are encouraged to submit the package electronically by email to the OOPD program contact who scheduled the meeting. In the draft guidance, FDA recommends that the meeting package contain the following information: (1) The date, time, and subject of the meeting; (2) an explanation of the meeting purposes; (3) basic information about the product to be discussed (*e.g.,* product name or identifier, designation or application number (if applicable), proposed rare disease or condition, brief background about the product); (4) proposed meeting agenda; (5) any data, information, or presentation materials to support the discussion (if needed); and (6) a list of all individuals, with their titles and affiliations, who are expected to participate in the meeting on behalf of the stakeholder.

C. Draft Meeting Minutes

Under the draft guidance, a stakeholder should prepare a draft of summary meeting minutes for all formal meetings and certain informal meetings. These draft minutes should be sent to the OOPD program contact by email with the subject heading ''Draft Meeting Minutes.'' The draft minutes should summarize the meeting discussion points, agreements, disagreements, and action items. OOPD will review and provide any revisions to the draft meeting minutes via email, and the stakeholder will then either accept the version as final and notify OOPD to that effect or will follow-up with questions and/or further revisions.

Description of Respondents: Individuals from industry, researchers, patient groups, and other stakeholders who seek a meeting with OOPD regarding orphan drug designation

requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues.

Burden estimate: Table 1 of this document provides an estimate of the annual reporting burden for the preparation and submission of meeting requests, meeting packages, and meeting minutes under the guidance.

Request for a meeting: Based upon information collected from OOPD program areas, approximately 2,120 informal and 46 formal meetings were requested with OOPD in fiscal year (FY) 2013 regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues. FDA anticipates that the number of meeting requests and stakeholders will remain the same or will only slightly increase, and therefore estimates the total number of meeting requests will be 2,166 annually (2120 informal and 46 formal meetings). The hours per response, which is the estimated number of hours that a stakeholder would spend preparing the information to be submitted with a meeting request in accordance with the draft guidance, is estimated to be approximately 3 hours for informal meetings and approximately 10 hours for formal meetings. Based on FDA's experience, the Agency expects that it will take stakeholders this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting. Therefore, the Agency estimates that stakeholders will spend 6,820 hours per year (6,360 hours for informal meetings and 460 hours for formal meetings) preparing meeting requests to OOPD regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues.

Meeting package: Based upon information collected from OOPD program areas, OOPD held approximately 46 formal meetings in FY 2013 regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues. FDA anticipates that the number of formal meetings, and therefore meeting packages, may increase only slightly as a result of this guidance; thus, the Agency estimates that the total responses will be 46 annually. As stated previously, it is current practice for stakeholders to submit meeting packages to the Agency in advance of any such formal meeting. The hours per response, which is the estimated number of hours that a stakeholder would spend preparing the meeting package in accordance with this draft guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the Agency expects it will take stakeholders this amount of time to gather and copy brief statements about the product, a description of details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the Agency. Therefore, the Agency estimates that stakeholders will spend 828 hours per year submitting meeting packages to the Agency prior to a formal meeting regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues.

Draft meeting minutes: Based upon information collected from OOPD program areas, OOPD received approximately 46 draft meeting minutes for formal meetings and 21 draft meeting minutes for informal meetings in FY 2013 regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues. FDA anticipates that the number of stakeholders submitting draft meeting minutes may remain the same or increase only slightly; thus, the Agency estimates that the total number of respondents will be 67 annually. As stated previously, it is current practice for stakeholders to submit draft meeting minutes to the Agency after all formal meetings and certain informal meetings. The hours per response, which is the estimated number of hours that a stakeholder would spend preparing draft meeting minutes in accordance with this draft guidance, is estimated to be approximately 8 hours. Based on FDA's experience, the Agency expects it will take stakeholders this amount of time to summarize the meeting discussion points, agreements, disagreements, and action items. Therefore, the Agency estimates that stakeholders will spend 536 hours per year submitting draft meeting minutes to the Agency documenting the meeting outcomes, agreements, disagreements, and action items as follow-up to all formal and certain informal meetings.

In the **Federal Register** of April 9, 2014 (79 FR 19623), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Meeting Requests (informal)	2120	1	2120	3	6360
Meeting Requests (formal)	46	1	46	10	460
Meeting Packages	46	1	46	18	828
Meeting Minutes	67	1	67	8	536
Total					8,184

Dated: December 11, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29612 Filed 12–17–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0097]

Providing Regulatory Submissions in Electronic Format—Standardized Study Data; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data.'' The guidance announced in this document is being issued in accordance with the Food and Drug Administration Safety and Innovation Act (FDASIA), which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to require that certain submissions under the FD&C Act and Public Health Service Act (PHS Act) be submitted in electronic format, beginning no earlier than 24 months after issuance of final guidance on that topic. The guidance describes how FDA plans to implement the requirements for the electronic submission of standardized study data contained in certain submissions under new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs), and investigational new drug applications (INDs). This finalizes the revised draft guidance that was issued on February 6, 2014.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the documents to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the documents.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ron Fitzmartin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1192, Silver Spring, MD 20993–0002, *ronald.fitzmartin@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, rm. 7301, Silver Spring, MD 20993, *stephen.ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDASIA (Pub. L. 112–144), signed by the President on July 9, 2012, amended the FD&C Act to add section 745A, entitled ''Electronic Format for Submissions.'' Section 745A(a)(1) of the FD&C Act requires that submissions under section 505(b), (i), or (j) of the FD&C Act (21 U.S.C. 355(b), (i), or (j)) and submissions under sections 351(a) or (k) of the PHS Act (42 U.S. C. 262(a) or (k)) be submitted to FDA in electronic format no earlier than 24 months after FDA issues final guidance on that topic.

In accordance with section 745A(a)(1) of the FD&C Act, FDA is issuing this guidance, announcing its determination that the study data contained in the submission types identified in this guidance must be submitted electronically (except for submissions that are exempted), in a format that FDA can process, review, and archive. Currently, the Agency can process, review, and archive electronic submissions of study data that use the standards, formats, and terminologies specified in the Data Standards Catalog [1] posted to the FDA's Study Data Standards Resources Web page.

In the **Federal Register** of February 6, 2014 (79 FR 7201), FDA announced the availability of the revised draft guidance entitled ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data.'' The comment period on the revised draft guidance ended on May 6, 2014. We reviewed all comments received on the draft guidance and revised several sections of the guidance. The updates include:

Section II.A: (1) Clarified which INDs and BLAs are addressed in this guidance. Specifically, a footnote was added to clarify the meaning of ''certain'' in the context of BLAs and INDs and states that the guidance is not applicable to INDs for devices that are regulated by CBER as biological products under section 351 of the PHS Act and to INDs that are noncommercial. Further, the guidance is not applicable to those devices that are regulated by CBER as biological products under section 351 of the PHS Act. Examples are provided in this regard. (2) Clarified that both clinical and nonclinical study data are within the scope of the guidance.

Section II.C: (1) Clarified that the Agency may refuse to file an NDA or BLA or refuse to receive an ANDA containing study data that are not in conformance with the required standards. (2) Clarified that both the Clinical Data Interchange Standards Consortium (CDISC) Study Data Tabulation Model (SDTM) and Standard Exchange for Nonclinical Data (SEND) are examples of study data standards for tabulations data. (3) Clarified that some controlled terminologies are extensible and permit additions to existing code lists. It is the expectation that sponsors or applicants will use the controlled terminologies maintained by external organizations as the standard.

Section II.D: Clarified the waiver process.

Section II.E: (1) Clarified that FDA recognizes that version updates to standards may be released in the interval between the start of a study and the submission of study data to the Agency and the Data Standards Catalog may list more than one version of a supported standard. (2) Specified the definition of study start date for both clinical and nonclinical studies. (3) Revised terminology to more clearly state when a particular requirement becomes required.

This guidance implements the electronic submission requirements of section 745A(a) of the FD&C Act by specifying the format for electronic submission of study data contained in NDA, ANDA, BLA, and IND submissions. With the publication of this **Federal Register** notice of availability, all studies with a start date [2] 24 months or later after the

[1] Available at *http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm.*

[2] For purposes of this guidance, the study start date for clinical studies is the earliest date of informed consent among any subject that enrolled in the study. For example, see Study Start Date (also known as the study initiation date) in the SDTM Trial Summary Domain (TSPARMCD = SSTDTC). For nonclinical studies, the study start date is the date on which the study protocol or plan is

Federal Register notice must use the appropriate FDA-supported standards, formats, and terminologies specified in the Data Standards Catalog for NDA, ANDA, and certain BLA submissions. Study data contained in certain IND submissions must use the specified formats for electronic submission in studies with a start date 36 months or later after this **Federal Register** notice of availability.

In section 745A(a) of the FD&C Act, Congress granted explicit authorization to FDA to implement the statutory electronic submission requirements by specifying the format for such submissions in guidance. Because this guidance provides such requirements under section 745A(a) of the FD&C Act, indicated by the use of the words must or required, it is not subject to the usual restrictions in FDA's good guidance practice regulations, such as the requirement that guidances not establish legally enforceable responsibilities. See 21 CFR 10.115(d).

II. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The guidance pertains to sponsors and applicants making regulatory submissions to FDA in electronic format for NDAs, ANDAs, BLAs, and INDs. The information collection discussed in the guidance is contained in our IND regulations (21 CFR part 312) and approved under OMB control number 0910–0014, our NDA regulations (including ANDAs) (21 CFR part 314) and approved under OMB control number 0910–0001, and our BLA regulations (21 CFR part 601) and approved under OMB control number 0910–0338.

Sponsors and applicants have been voluntarily submitting standardized study data in electronic format. Under FDASIA, sponsors and applicants will be required to make all of these submissions electronically in compliance with the specified standards, formats, and terminologies. These requirements will be phased in over 2- and 3-year periods after the issuance of this guidance.

For many years sponsors and applicants have been submitting electronically using the electronic common technical document format and have included electronic study data in both legacy and standardized formats. For some sponsors and applicants there may be new costs, including capital costs or operating and maintenance costs, which would result from the requirements under FDASIA and this guidance, because some sponsors and applicants would have to change from submissions that have included legacy (non-standard) study data to submissions in compliance with this guidance. FDA estimates that for some sponsors and applicants the costs may be as follows:

- *Data management (hardware/software):* $350,000–$1,000,000
- *Initial data management operations:* $500,000–$1,000,000
- *Training:* $100,000—$250,000

III. Comments

Interested persons may submit either electronic comments to *http://www.regulations.gov* or written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: December 12, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29608 Filed 12–17–14; 8:45 am]

BILLING CODE 4164–01–P

approved (signed) by the Study Director. For example, see Study Start Date in the SEND Trial Summary Domain (TSPARMCD = STSTDTC), *http://www.cdisc.org.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0085]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 20, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0629. Also include the FDA 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, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics—(OMB Control Number 0910–0629)—Extension

The guidance document provides information concerning cooperative manufacturing arrangements applicable to biological products subject to licensure under section 351 of the Public Health Service Act (42 U.S.C. 262). The guidance addresses several types of manufacturing arrangements (*i.e.,* short supply arrangements, divided manufacturing arrangements, shared manufacturing arrangements, and contract manufacturing arrangements) and describes certain reporting and recordkeeping responsibilities, associated with these arrangements, including the following: (1) Notification of all important proposed changes to production and facilities; (2) notification of results of tests and investigations regarding or possibly impacting the product; (3) notification of products manufactured in a contract facility; and (4) standard operating procedures.

1. Notification of All Important Proposed Changes to Production and Facilities

Each licensed manufacturer in a divided manufacturing arrangement or shared manufacturing arrangement must notify the appropriate FDA Center regarding proposed changes in the manufacture, testing, or specifications of its product, in accordance with § 601.12 (21 CFR 601.12). In the guidance, we recommend that each licensed manufacturer that proposes such a change should also inform other participating licensed manufacturer(s) of the proposed change.

For contract manufacturing arrangements, we recommend that the contract manufacturer should share with the license manufacturer all important proposed changes to production and facilities (including introduction of new products or at inspection). The license holder is responsible for reporting these changes to FDA (§ 601.12).

2. Notification of Results of Tests and Investigations Regarding or Possibly Impacting the Product

In the guidance, we recommend the following for contract manufacturing arrangements:

- The contract manufacturer should fully inform the license manufacturer of the results of all tests and investigations regarding or possibly having an impact on the product; and
- The license manufacturer should obtain assurance from the contractor that any FDA list of inspectional observations will be shared with the license manufacturer to allow evaluation of its impact on the purity, potency, and safety of the license manufacturer's product.

3. Notification of Products Manufactured in a Contract Facility

In the guidance, we recommend for contract manufacturing arrangements that a license manufacturer cross reference a contract manufacturing facility's Master Files only in circumstances involving certain proprietary information of the contract manufacturer, such as a list of all products manufactured in a contract facility. In this situation, the license manufacturer should be kept informed of the types or categories of all products manufactured in the contract facility.

4. Standard Operating Procedures

In the guidance, we remind the license manufacture that the license manufacturer assumes responsibility for compliance with the applicable product and establishment standards (21 CFR 600.3(t)). Therefore, if the license manufacturer enters into an agreement with a contract manufacturing facility, the license manufacturer must ensure that the facility complies with the applicable standards. An agreement between a license manufacturer and a contract manufacturing facility normally includes procedures to regularly assess the contract manufacturing facility's compliance. These procedures may include, but are not limited to, review of records and manufacturing deviations and defects, and periodic audits.

For shared manufacturing arrangements, each manufacturer must submit a separate biologics license application describing the manufacturing facilities and operations applicable to the preparation of that manufacturer's biological substance or product (§ 601.2(a)). In the guidance, we state that we expect the manufacturer that prepares (or is responsible for the preparation of) the product in final form for commercial distribution to assume primary responsibility for providing data demonstrating the safety, purity, and potency of the final product. We also state that we expect the licensed finished product manufacturer to be primarily responsible for any postapproval obligations, such as postmarketing clinical trials, additional product stability studies, complaint handling, recalls, postmarket reporting of the dissemination of advertising and promotional labeling materials as required under § 601.12(f)(4) and adverse experience reporting. We recommend that the final product manufacturer establish a procedure with the other participating manufacturer(s) to obtain information in these areas.

Description of Respondents: The recordkeeping and reporting recommendations described in this document affect the participating licensed manufacturer(s), final product manufacturer(s), and contract manufacturer(s) associated with cooperative manufacturing arrangements.

Burden Estimate: We believe that the information collection provisions in the guidance do not create a new burden for respondents. We believe the reporting and recordkeeping provisions are part of usual and customary business practices. Licensed manufacturers would have contractual agreements with participating licensed manufacturers, final product manufacturers, and contract manufacturers, as applicable for the type of cooperative manufacturing arrangement, to address all these information collection provisions.

The guidance also refers to previously approved collections of information found in FDA regulations at parts 201, 207, 211, 600, 601, 606, 607, 610, 660, 801, 803, 807, 809, and 820 (21 CFR parts 201, 207, 211, 600, 601, 606, 607, 610, 660, 801, 803, 807, 809, and 820). The collections of information in §§ 606.121, 606.122, and 610.40 have been approved under OMB control number 0910–0116; § 610.2 has been approved under OMB control number 0910–0206; §§ 600.12(e) and 600.80 have been approved under OMB control number 0910–0308; §§ 601.2(a), 601.12, 610.60 through 610.65, 610.67, 660.2(c), 660.28(a) and (b), 660.35(a), (c) through (g), (i) through (m), 660.45, and 660.55(a) and (b) have been approved under OMB control number 0910–0338; §§ 803.20, 803.50, and 803.53 have been approved under OMB control number 0910–0437; and §§ 600.14 and 606.171 have been approved under OMB control number 0910–0458. The current good manufacturing practice regulations for finished pharmaceuticals (part 211) have been approved under OMB control number 0910–0139; §§ 820.181 and 820.184 have been approved under OMB control number 0910–0073; the establishment registration regulations (parts 207, 607, and 807) have been approved under OMB control numbers 0910–0045, 0910–0052, and 0910–0625; and the labeling regulations (parts 201, 801, and 809) have been approved under OMB control numbers 0910–0537, 0910–0572, and 0910–0485.

In the **Federal Register** of July 7, 2014 (79 FR 38318), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received no comments.

Dated: December 11, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29611 Filed 12–17–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1953]

Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Submissions Under Section 745A(a) of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of a guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Submissions Under Section 745A(a) of the Federal Food, Drug, and Cosmetic Act.'' The guidance announced in this notice sets forth FDA's interpretation of the Food and Drug Administration Safety and Innovation Act (FDASIA), which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to require that certain submissions under the FD&C Act and the Public Health Service Act be submitted in electronic format, beginning no earlier than 24 months after issuance of a final version of a guidance document specifying the format for such electronic submissions. This guidance describes how FDA interprets and plans to implement the electronic submission requirements and finalizes the draft guidance that was issued on February 6, 2014.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the documents to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the documents.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ron Fitzmartin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1192, Silver Spring, MD 20993–0002, *ronald.fitzmartin@fda.hhs.gov;* or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Submissions Under Section 745A(a) of the Federal Food, Drug, and Cosmetic Act.'' Section 1136 of FDASIA (Pub. L. 112–144), signed by the President on July 9, 2012, amended the FD&C Act to add section 745A, entitled ''Electronic Format for Submissions'' (21 U.S.C. 379k–1). Drug and biological product submissions are addressed in section 745A(a) of the FD&C Act.

Section 745A(a)(1) of the FD&C Act describes the general scope of section 745A(a) and provides that submissions under new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs), and investigational new drug applications (INDs) must be in electronic format specified in FDA guidance. Section 745A(a)(2) of the FD&C Act states that the guidance issued by FDA may provide a timetable for future standards and criteria for waivers and exemptions. Section 745A(a)(3) of the FD&C Act provides that the electronic submission requirements in section 745A(a) do not apply to submissions under section 561 of the FD&C Act (21 U.S.C.360bbb).

This guidance describes FDA's interpretation of the scope of section 745A(a) of the FD&C Act. It announces that certain INDs will be exempted from the electronic submission requirements. Finally, it describes the process and timetable that FDA will use to implement the electronic submission requirements. As described in the guidance, FDA will develop individual guidances to specify the electronic formats for certain types of submissions under section 745A(a). Under section 745A(a)(1) of the FD&C Act, electronic submissions can be required no earlier than 24 months after FDA issues a final guidance. Therefore, no earlier than 24 months after issuance of the final version of an individual guidance specifying the format for certain types of submissions under section 745A(a) of the FD&C Act, the Agency will begin requiring that the submissions under NDAs, ANDAs, certain BLAs, and certain INDs be submitted in the specified electronic format for the types of submissions described in that guidance.

Individual guidances will be developed to specify the electronic formats, subject matter, and scope of applicability for certain submissions under section 745A(a) of the FD&C Act. Once an individual guidance is finalized and the timetable for implementation described in that guidance has passed, the guidance will have binding effect and the electronic format(s) specified in that guidance must be used for submissions to NDAs, ANDAs, certain BLAs, and certain INDs.

In the **Federal Register** of February 6, 2014 (79 FR 7200), FDA announced a draft version of this guidance entitled ''Providing Regulatory Submissions in Electronic Format—Submissions Under Section 745A(a) of the Federal Food, Drug, and Cosmetic Act.'' The comment period on the draft guidance ended on May 6, 2014. We reviewed all comments received on the draft guidance and revised several sections of the guidance. The updates include:

Section III.A and III.B: Clarified that the scope of the requirement under section 754A(a) does not extend to certain INDs and certain BLAs. Also clarified that certain INDs are exempted from the electronic submission requirements under section 745A(a)(2). Specifically, we clarified that INDs and BLAs for devices that are regulated by CBER as biological products under Section 351 of the Public Health Service (PHS) Act are instead subject to the requirements under Section 745A(b), and that, issued in section 745A(a)(2), INDs that are noncommercial are exempt from the requirements under section 745A(a). We provided examples in this regard.

Section III.D: Clarified that the individual guidances under 745A(a) will specify electronic formats, subject matter, and scope of applicability, as well as the timetable for implementation.

Section III.F: Clarified the timetable under which revisions or updates to electronic submission standards will take effect.

FDA guidances ordinarily contain standard language explaining that guidances should be viewed only as recommendations unless specific regulatory or statutory requirements are cited. FDA is not including this standard language in this guidance because this guidance contains binding provisions. In section 745A(a) of the FD&C Act, Congress granted explicit authorization to FDA to specify in guidance the format for the electronic submissions required under that section. Accordingly, this guidance explains such requirements under section 745A(a) of the FD&C Act, indicated by the use of the words must or required, and therefore is not subject to the usual restrictions in FDA's good guidance practice regulations, such as the requirement that guidances not

establish legally enforceable responsibilities. See 21 CFR 10.115(d).

II. Paperwork Reduction Act of 1995

This guidance contains no collection of information. As discussed in the guidance, FDA intends to develop individual guidances to specify the electronic formats for certain submissions under section 745A(a) of the FD&C Act. We will discuss any information collection subject to clearance by OMB under the Paperwork Reduction Act in each **Federal Register** notice announcing the availability of the individual guidances that specify the required electronic formats.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: December 12, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29609 Filed 12–17–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Complementary and Alternative Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine

Date: February 6, 2015.

Closed: 8:30 a.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Open: 10:00 a.m. to 4:00 p.m.

Agenda: Report from the Institute Director and other staff.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, Ph.D., Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–2014, *goldrosm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *nccam.nih.gov/about/naccam/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 12, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–29571 Filed 12–17–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development (NICHD); Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. A portion of this meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review and discussion of grant applications. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 22, 2015.

Open: January 22, 2015, 8:00 a.m. to 12:10 p.m.

Agenda: Report of the Director, NICHD; Report of the Acting Director, Division of Extramural Research, NICHD; Discussion of the Outstanding Investigator Award (R35); and New Business of the Council.

Closed: January 22, 2015, 1:15 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Caroline Signore, MD., Mp.H., Acting Director, Division of Extramural Research, *Eunice Kenney Shriver* National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 4A05, MSC 7510, Bethesda, MD 20892, (301) 496–5577.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance

onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

In order to facilitate public attendance at the open session of Council in the main meeting room, Conference Room 6, please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation, additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS)

Dated: December 12, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–29570 Filed 12–17–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Deputy Director for Intramural Research, National Institutes of Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Deputy Director for Intramural Research, National Institutes of Health.

Date: January 9, 2015.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To discuss the Advisory Committee to the Deputy Director for Intramural Research Report recommendations on the site visit review of the Office of Animal Care and Use.

Place: National Institutes of Health, Building 1, Room 160, Tele: 866–556–1098, Code 48960, 8600 Rockville Pike, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael M. Gottesman, Deputy Director, National Institutes of Health, Building One, Room 160, Bethesda, MD 20892, 301–496–1921.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 12, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–29573 Filed 12–17–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Multivalent Vaccines for Rabies Virus and Ebola and Marburg (Filoviruses)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404, that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a an exclusive license to practice the following invention as embodied in the following patent applications: E–032–2011/0, Blaney et al., ''Multivalent Vaccines for Rabies Virus and Filoviruses'', U.S. Patent Application Number 61/439,046, filed on February 3, 2011, PCT Application Number PCT/US2012/23575, filed on February 2, 2012, U.S. Patent Application Number 13/983,545, filed on August 2, 2013, European Patent Application Number 12702953.6, filed on February 2, 2012, and Canadian Patent Application Number 2826594, filed on February 2, 2012, to Exxell BIO, Inc., having a place of business in Shoreview, Minnesota, United States of America. The patent rights in these inventions have been assigned to the United States of America and Thomas Jefferson University.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before January 20, 2015 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *ps193c@nih.gov;* Telephone: (301) 435–4646; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The inventors have developed a new platform based on live or chemically inactivated (killed) rabies virus (RABV) virions containing EBOV glycoprotein (GP) in their envelope. In preclinical trials, immunization with such recombinant RABV virions provided excellent protection in mice against lethal challenge with the mouse adapted EBOV and RABV. More specifically, the inventors have developed a trivalent filovirus vaccine based on killed rabies virus virions for use in humans to confer protection from all medically relevant filoviruses and RABV. Two additional vectors containing EBOV Sudan GP or MARV GP are planned to be constructed in addition to the previously developed EBOV Zaire GP containing vaccine. Live attenuated vaccines have been developed for use in at risk nonhuman primate populations in Africa and inactivated vaccines have been developed for use in humans. One recent use contemplated by the inventors is use of the vaccine candidates to generate polyclonal sera against Filoviruses (*i.e.* Ebola and Marburg).

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.

These patent rights are the subject of a previous **Federal Register** notice (see 79 FR 18039, Monday, March 31, 2014).

The fields of use may be limited to production of polyclonal antibodies for prevention/treatment of Filoviruses in humans and non-human animals.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 11, 2014.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–29572 Filed 12–17–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–1020]

Guidance on Maritime Cybersecurity Standards

AGENCY: Coast Guard, DHS.

ACTION: Notice with request for comments.

SUMMARY: The Coast Guard is developing policy to help vessel and facility operators identify and address cyber-related vulnerabilities that could contribute to a Transportation Security Incident. Coast Guard regulations require certain vessel and facility operators to conduct security assessments, and to develop security plans that address vulnerabilities identified by the security assessment. The Coast Guard is seeking public input from the maritime industry and other interested parties on how to identify and mitigate potential vulnerabilities to cyber-dependent systems. The Coast Guard will consider these public comments in developing relevant guidance, which may include standards, guidelines, and best practices to protect maritime critical infrastructure.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before February 17, 2015.

ADDRESSES: Submit comments using one of the listed methods, and see **SUPPLEMENTARY INFORMATION** for more information on public comments.

- Online—*http://www.regulations.gov* following Web site instructions.
- Fax—202–493–2251.
- Mail or hand deliver—Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Hours for hand delivery are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–366–9329).

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LT Josephine Long, Coast Guard; telephone 202–372–1109, email *Josephine.A.Long@uscg.mil* or LCDR Joshua Rose, Coast Guard; 202–372–1106, email *Joshua.D.Rose@uscg.mil.* For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826, toll free 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to submit comments (or related material) on the questions listed below. We will consider all submissions and may adjust our final policy actions based on your comments. Comments should be marked with docket number USCG–2014–1020, and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ x 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following the Web site's instructions. You can also view the docket at the Docket Management Facility (see the mailing address under **ADDRESSES**) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Discussion

The Coast Guard is developing policy to help vessel and facility operators identify and address cyber-related vulnerabilities that could contribute to a Transportation Security Incident (TSI).[1] Coast Guard regulations require certain vessel and facility operators to conduct security assessments, and to develop security plans that address vulnerabilities identified by the security assessment.[2] Vessel and facility security plans must also address specific security functions, including the following:

- Communications
- Security Training Requirements
- Procedures for vessel/facility interfacing
- Declaration of Security
- Security Systems and Equipment Maintenance
- Security Measures for Access Control
- Security Measures for Handling Cargo
- Security Measures for Monitoring
- Security Incident Procedures

The Coast Guard is seeking public input on the following questions:

(1) What cyber-dependent systems, commonly used in the maritime industry, could lead or contribute to a TSI if they failed, or were exploited by an adversary?

(2) What procedures or standards do vessel and facility operators now employ to identify potential cybersecurity vulnerabilities to their operations?

(3) Are there existing cybersecurity assurance programs in use by industry that the Coast Guard could recognize? If so, to what extent do these programs address vessel or facility systems that could lead to a TSI?

(4) To what extent do current security training programs for vessel and facility personnel address cybersecurity risks and best practices?

(5) What factors should determine when manual backups or other non-technical approaches are sufficient to address cybersecurity vulnerabilities?

(6) How can the Coast Guard leverage Alternative Security Programs [3] to help vessel and facility operators address cybersecurity risks?

(7) How can vessel and facility operators reliably demonstrate to the Coast Guard that critical cyber-systems meet appropriate technical or procedural standards?

(8) Do classification societies, protection and indemnity clubs, or insurers recognize cybersecurity best practices that could help the maritime industry and the Coast Guard address

[1] A *Transportation Security Incident* is defined in 33 CFR 101.105 to mean ''a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.''

[2] 33 CFR parts 104 and 105, subparts C and D.

[3] An *Alternative Security Program* is defined in 33 CFR 101.105 to mean ''a third-party or industry organization developed standard that the Commandant [of the Coast Guard] has determined provides an equivalent level of security to that established by [33 CFR Chapter I, Subchapter H].''

cybersecurity risks? (See also *http://www.dhs.gov/publication/cybersecurity-insurance.*)

Authority

This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: December 12, 2014.

Captain Andrew Tucci,

Chief, Office of Port & Facility Compliance, U.S. Coast Guard.

[FR Doc. 2014–29658 Filed 12–17–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1436]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On November 3, 2014, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 79 FR 65231. The table provided here represents the proposed flood hazard determinations and communities affected for the East Nishnabotna Watershed.

DATES: Comments are to be submitted on or before March 18, 2015.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1436, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 79 FR 65230 in the November 3, 2014, issue of the **Federal Register**, FEMA published a table titled East Nishnobta Watershed. This table contained inaccurate information as to the spelling for the watershed name.

In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 24, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

EAST NISHNABOTNA WATERSHED

Community	Community map repository address
Audubon County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Audubon	City Hall, 410 North Park Place, Audubon, IA 50025.
City of Brayton	City Hall, 202 County Trunk Road, Brayton, IA 50042.
City of Exira	City Hall, 108 East Washington Street, Exira, IA 50076.
City of Gray	Audubon County Courthouse, 318 Leroy Street, Suite 4, Audubon, IA 50025.
City of Kimballton	City Hall, 116 North Main Street, Kimballton, IA 51543.
Unincorporated Areas of Audubon County	Audubon County Courthouse, 318 Leroy Street, Suite 4, Audubon, IA 50025.

EAST NISHNABOTNA WATERSHED—Continued

Community	Community map repository address
Montgomery County, Iowa, and Incorporated Areas	
City of Coburg	Montgomery County Courthouse, 105 East Coolbaugh Street, Red Oak, IA 51566.
City of Elliott	Clerk's Office, 409 Main Street, Elliott, IA 51532.
City of Grant	Montgomery County Courthouse, 105 East Coolbaugh Street, Red Oak, IA 51566.
City of Red Oak	City Hall, 601 North 6th Street, Red Oak, IA 51566.
City of Stanton	City Hall, 310 Broad Avenue, Stanton, IA 51573.
City of Villisca	City Hall, 318 South 3rd Avenue, Villisca, IA 50864.
Unincorporated Areas of Montgomery County	Montgomery County Courthouse, 105 East Coolbaugh Street, Red Oak, IA 51566.

[FR Doc. 2014–29548 Filed 12–17–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1343]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On September 19, 2013, FEMA published in the **Federal Register** a proposed flood hazard determination notice at 78 FR 57646 for Harris County, Texas, and Incorporated Areas. The table published in this notice provides corrected or updated information regarding the proposed flood hazard determinations for affected communities in Harris County, Texas, and Incorporated Areas.

DATES: Comments are to be submitted on or before March 18, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1343, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://www.floodsrp.org/pdfs/srp_fact_sheet.pdf.*

Correction

In the proposed flood hazard determination notice in the September 19, 2013, issue of the **Federal Register** beginning at 78 FR 57646, FEMA published a table titled ''Harris County, Texas, and Incorporated Areas.'' This table contained a Web page address for online access and viewing of the proposed flood hazard determination information for the communities listed in the table. A Revised Preliminary FIRM and/or FIS report have subsequently been issued for some or all of the communities listed in the table.

The information available through the table published below is to be used in lieu of the information previously available.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 24, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community Map Repository Address
Harris County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Baytown	City Hall, 2401 Market Street, Baytown, TX 75522.
City of Deer Park	City Hall, 710 East San Augustine, Deer Park, TX 77536.
City of El Lago	City Hall, 411 Tallowood Drive, El Lago, TX 77586.
City of Friendswood	City Hall, 910 South Friendswood Drive, Friendswood, TX 77546.
City of Galena Park	City Hall, 2000 Clinton Drive, Galena Park, TX 77547.
City of Houston	Floodplain Management Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.
City of Jacinto City	Jacinto City City Hall, 1301 Mercury Drive, Houston, TX 77029.
City of La Porte	City Hall, 604 West Fairmont Parkway, La Porte, TX 77571.
City of League City	Building Department, 600 West Walker Street, League City, TX 77573.
City of Morgans Point	City Hall, 1415 East Main Street, Morgan's Point, TX 77571.
City of Nassau Bay	City Hall, 1800 Space Park Drive, Suite 200, Nassau Bay, TX 77058.
City of Pasadena	Municipal Services Building, 1114 Davis Street, Pasadena, TX 77506.
City of Seabrook	City Hall, 1700 First Street, Seabrook, TX 77586.
City of Shoreacres	City Hall, 601 Shoreacres Boulevard, Shoreacres, TX 77571.
City of South Houston..	City Hall, 1018 Dallas Street, South Houston, TX 77587.
City of Taylor Lake Village	City Hall, 500 Kirby Boulevard, Taylor Lake Village, TX 77586.
City of Webster	City Hall, 101 Pennsylvania Avenue, Webster, TX 77598.
Unincorporated Areas of Harris County	Harris County Permits Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.

[FR Doc. 2014–29547 Filed 12–17–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0037]

Agency Information Collection Activities: Refugee/Asylee Relative Petition, Form I–730; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 9, 2014, at 79 FR 61090, allowing for a 60-day public comment period. USCIS did receive 3 comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0037.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–730; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–730 is used by a refugee or asylee to file on behalf of his or her spouse and/or children for follow-to-join benefits provided that the relationship to the refugee/asylee existed prior to their admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 57,600.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may

also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: December 12, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–29610 Filed 12–17–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0053]

Agency Information Collection Activities: Request for Certification of Military or Naval Service, Form N–426; Extension, Without Change, of a Currently Approved Collection

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

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 17, 2015.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0053 in the subject box, the agency name and Docket ID USCIS–2007–0015. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2007–0015;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–426; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information collected through Form N–426 to request a verification of the military or naval service claim by an applicant filing for naturalization on the basis of honorable service in the U.S. armed forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–426 is 10,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,330 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no cost burden associated with this collection of information.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: December 12, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–29581 Filed 12–17–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0017]

Agency Information Collection Activities: Application for Advance Permission To Enter as Nonimmigrant [Pursuant to Section 212(d)(3)(A)(ii) of the INA, Section 212(d)(13) of the INA, or Section 212(d)(14) of the INA, Form I–192; Revision of a Currently Approved Collection

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 17, 2015.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0017 in the subject box, the agency name and Docket ID USCIS–2008–0009. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2008–0009;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov*;

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant [Pursuant to Section 212(d)(3)(A)(ii) of the INA, Section 212(d)(13) of the INA, or Section 212(d)(14) of the INA.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–192; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is provided by the U.S. Citizenship and Immigration Services (USCIS) as a means for certain inadmissible nonimmigrant aliens to apply for permission to enter the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–192 is 10,448 and the estimated hour burden per response is .5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 5,224 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no estimated annual cost burden associated with this collection of information.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: December 12, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–29588 Filed 12–17–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2547–14; DHS Docket No. USCIS–2007–0043]

Notice of Changes to Application Procedures for the Cuban Family Reunification Parole Program

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) announces that as of February 17, 2015, USCIS will begin requiring the filing of an Application for Travel Document (Form I–131) and payment of its associated fee or approval of a fee waiver request from individuals who are applying for the Cuban Family

Reunification Parole (CFRP) Program on behalf of a beneficiary in Cuba. No form or fee is currently required for the CFRP Program. Under the CFRP Program, USCIS offers certain beneficiaries of approved family-based immigrant petitions the opportunity to be paroled into the United States to apply for lawful permanent resident status, rather than remain in Cuba waiting for their immigrant visas to become available. The purpose of the program is to expedite family reunification through safe, legal, and orderly channels of migration to the United States and to discourage irregular and inherently dangerous maritime migration. This notice is intended to: Make the CFRP Program application and adjudication processes consistent with those for most other requests for parole filed on behalf of individuals outside the United States; facilitate centralized filing and more standardized processing of parole applications; and, recover costs incurred by USCIS to adjudicate and provide CFRP Program travel documents. This notice will affect only those individuals who receive a written invitation to apply to the CFRP Program from the Department of State's National Visa Center (NVC) which is dated on or after February 17, 2015. This notice will not affect existing CFRP Program beneficiaries or individuals who received a notice of program eligibility from the NVC predating the publication of this notice and who submitted to the NVC the complete documentation required to apply for the program prior to February 17, 2015 (referred to as 'grandfathered' cases). Grandfathered cases will continue to be processed without form or fee.

DATES:

- As of December 18, 2014, the NVC will no longer issue CFRP Program eligibility notices inviting eligible petitioners to opt in to the program without the required form and fee.
- On or after February 17, 2015, the NVC will begin sending to eligible petitioners a written invitation to apply to the CFRP Program using the required form and fee or request for fee waiver.
- A petitioner who received a CFRP Program eligibility notice dated prior to December 18, 2014 must submit to the NVC the complete required documentation to apply for the CFRP Program before February 17, 2015 to be grandfathered and eligible for processing without a form and fee.
- A petitioner who received a CFRP Program eligibility notice before December 18, 2014 who fails to submit to the NVC the complete required documentation to apply for the CFRP Program before February 17, 2015 cannot apply for the program until the petitioner receives a written invitation to apply to the CFRP Program using a required form and fee.
- Any person who applies for the CFRP Program after February 17, 2015 must submit a form and fee as prescribed in this notice and after receipt of a written invitation to apply from the NVC.

FOR FURTHER INFORMATION CONTACT: Pilar Peralta Mihalko, Chief, International Adjudications Support Branch, International Operations Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 1585 S. Manchester Avenue, Anaheim, CA 92802, Telephone (714) 808–8133.

SUPPLEMENTARY INFORMATION:

I. Background on CFRP Program

The CFRP Program was announced on November 15, 2007, via **Federal Register** notice (72 FR 65588). The notice explained that, in accordance with the U.S.-Cuba Migration Accords, the United States committed to ensuring that total legal migration to the United States from Cuba would be a minimum of 20,000 Cubans each year, not including immediate relatives of U.S. citizens (USC). *See* Joint Communiqué on Migration, U.S.-Cuba (Sept. 9, 1994) (known together with the May 2, 1995 Joint Statement as the U.S.-Cuba Migration Accords (hereinafter ''Migration Accords'')). Through the CFRP the United States offers a safe, legal, and orderly means of migrating to the United States.

The CFRP Program addressed two constraints posed by the array of migration programs that existed at the time of the program's creation, which had limited the ability of the United States to effectively promote safe, legal, and orderly migration as an alternative to inherently dangerous maritime crossings. First, with the exception of immediate relatives of USCs (*i.e.,* spouse, unmarried child(ren) under 21 years of age, and parents), *see* Immigration and Nationality Act (INA) sec. 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i), the number of family-based immigrant visas that are available in any given year is limited by statute, *see* INA secs. 201(c), 202(a), 203, 8 U.S.C. 1151(c), 1152(a), 1153. These statutory limits have resulted in long waiting periods before family members remaining in Cuba may join the USC and lawful permanent resident (LPR) family members who petitioned for them. Since 1998, the Cuban Government has not permitted a new registration for the Special Program for Cuban Migration, the parole lottery initiated by the United States in support of the Migration Accords. Without this pool of individuals, there was a deficiency in the number of Cubans potentially eligible for travel to the United States.

Under the CFRP Program, USCIS exercises its discretionary parole authority to permit eligible Cuban nationals to come to the United States to join their family members.[1] Granting parole to eligible aliens under the CFRP Program serves the significant public benefit of enabling the United States to meet its commitments under the Migration Accords. It also lessens the perceived need for family members left behind in Cuba to make irregular and inherently dangerous attempts to arrive in the United States through unsafe maritime crossings, thereby discouraging alien smuggling as a means to enter the United States. Whether to parole a particular alien remains, however, a case-by-case, discretionary determination.

II. Background on Requiring a Form and a Fee

USCIS has not previously required a form or collected a fee for parole requests under the CFRP Program. As a result, USCIS has not used a standardized USCIS form, and has not required family members or beneficiaries to cover any of the costs associated with the benefit provided to them under the CFRP Program. The INA provides that USCIS may collect fees at a level that will ensure recovery of the full costs of adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigration applicants. INA sec. 286(m), 8 U.S.C. 1356(m). Operating expenses for the CFRP Program have been fully funded through use of fee revenue from other immigration benefit applicants. To bring CFRP Program parole requests in line with the majority of other parole requests filed on behalf of individuals outside of the United States, USCIS will now require the submission of a completed Form I–131, Application for Travel Document, and the fee required by USCIS fee regulations at 8 CFR 103.7(b)(1)(i)(M) for any CFRP Program application filed on or after February 17, 2015. Applicants for the CFRP Program must complete

[1] *See* INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A) (permitting parole of certain aliens into the United States, as a matter of discretion and on a case-by-case basis, for urgent humanitarian reasons or significant public benefit); *see also* 8 CFR 212.5(c) & (d) (discretionary authority for establishing conditions of parole and for terminating parole).

and file the Form I–131 in effect at the time of filing—and follow any additional instructions included in the program eligibility notice they receive from either USCIS or the NVC in submitting their application. A completed Form I–131 and fee or fee waiver request must be filed for each individual on whose behalf parole is being requested.

III. Participation in the CFRP Program and Application Process

USCIS offers participation in the CFRP Program to Cuban nationals who reside in Cuba and who are the beneficiaries—including any eligible spouse and child accompanying or following-to-join the principal beneficiaries (*see* INA sec. 203(d), 8 U.S.C. 1153(d))—of an approved Form I–130, Petition for Alien Relative, but for whom an immigrant visa is not immediately available. Participation in the CFRP Program is voluntary.

Prior to the date of this notice, the NVC mailed written notice to eligible U.S.-based U.S.C. and LPR petitioners with approved Forms I–130 indicating their beneficiaries' eligibility to participate in the CFRP Program. The notice invited an interested petitioner to submit to the NVC a copy of their approved Form I–130 and other supporting documents to opt in to the CFRP Program and begin the process of requesting parole. No formal application form or fee was required to apply. As of the date of this notice, the NVC will no longer issue CFRP Program eligibility notices that do not require a form and fee to apply. Petitioners with CFRP Program eligibility notices dated prior to December 18, 2014 must submit to the NVC the complete required documentation to opt in to the CFRP Program prior to February 17, 2015 in order to be grandfathered and considered for processing without a form and fee.

On or after February 17, 2015, participation in the CFRP Program will be predicated on submission of a Form I–131 and the requisite fee(s) or request for fee waiver that has been approved by USCIS. A U.S.C. or LPR petitioner in the United States with an approved Form I–130 that was filed on behalf of a beneficiary relative residing in Cuba, for whom a visa is not anticipated to be available during the CFRP processing time, will receive a written invitation from the NVC regarding the beneficiary's eligibility to participate in the CFRP Program and the procedures for requesting parole, if desired. The notice will instruct the recipient on how to file a completed Form I–131 and submit the required fee(s) or fee waiver request to apply for the program. USCIS will reject a request for parole under the CFRP Program submitted without the required form and fee(s) or a request for a fee waiver.

USCIS officers or Department of State consular officers will interview qualified beneficiaries in Havana to verify their eligibility for the program. Beneficiaries may also have their biometrics collected. If USCIS exercises its discretion to authorize parole under the CFRP Program, USCIS or the Department of State will issue the necessary travel documents to the beneficiary in Cuba. These travel documents will enable the beneficiary to travel safely to the United States and seek parole by U.S. Customs and Border Protection (CBP) at a U.S. port-of-entry to join his or her family member. A beneficiary who is paroled into the United States would then be eligible to apply to adjust status to that of lawful permanent resident after he or she has been physically present in the United States for one year as provided by the Cuban Adjustment Act, Pub. L. 89–732, 80 Stat. 1161 (8 U.S.C. 1255 note), or once the beneficiary's visa becomes available, whichever comes first.

Participation in the CFRP Program is not available to aliens who qualify as ''immediate relatives'' under section 201(b)(2)(A)(i) of the INA, 8 U.S.C. 1151(b)(2)(A)(i). Such aliens may seek immigrant visas for travel to the United States immediately upon the approval of the immigrant visa petitions filed on their behalf.

For eligible beneficiaries who are not ''immediate relatives,'' if an immigrant visa becomes available while the Form I–131 is pending, the beneficiary will be able to proceed with the parole process to completion, if desired. Alternatively, the beneficiary can choose to pursue immigrant visa processing, which will require payment of associated fees but will enable the individual to apply for admission to the United States as an immigrant, if found eligible by the Department of State for the visa and admissible by CBP at the port of entry.

IV. Paperwork Reduction Act (PRA)

Under the PRA, 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval, any new reporting requirements they impose. The Application for Travel Document, Form I–131, has been approved by OMB and assigned OMB control number 1615–0013. USCIS is making no changes to the Form in connection with the CFRP Program and this notice; however, USCIS estimates that this notice will result in an annual average of 13,000–15,000 Form I–131 filings per year. The current OMB-approved estimate of the number of annual respondents filing a Form I–131 is 940,671. USCIS has overestimated the number of individuals who will use this form to apply for immigration benefits to the degree that additional respondents who will use it to file for the CFRP Program will be covered within the 940,671 estimated. USCIS is not changing the collection instrument or increasing its burden estimates in connection with this notice. Therefore, USCIS is not publishing a notice under the PRA or making revisions to the currently approved burden for OMB control number 1615–0013.

Additional information about the CFRP Program and the application process will be posted on the USCIS Web site at *www.uscis.gov.*

Dated: December 11, 2014.

León Rodríguez

Director, U.S. Citizenship and Immigration Services.

[FR Doc. 2014–29486 Filed 12–17–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2548–14; DHS Docket No. USCIS–2014–0013]

Implementation of Haitian Family Reunification Parole Program

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This notice announces the implementation of U.S. Citizenship and Immigration Services' (USCIS) Haitian Family Reunification Parole (HFRP) Program. Under this program, USCIS offers certain Haitian beneficiaries of family-based immigrant petitions approved on or before December 18, 2014 an opportunity to receive a discretionary grant of parole to enter the United States up to approximately two years before their immigrant visas become available, rather than remain in Haiti awaiting availability of their immigrant visas. The program is intended to expedite family reunification through safe, legal, and orderly channels of migration to the United States, increase existing avenues for legal migration from Haiti, and help Haiti continue to recover from the devastation and damage suffered in the January 12, 2010 earthquake.

DATES:

- The HFRP Program will only be available to Haitian beneficiaries of family-based immigrant petitions approved on or before December 18, 2014.
- On or after February 2, 2015, the Department of State's National Visa Center (NVC) will begin sending to eligible petitioners written invitations to apply to the HFRP Program.

FOR FURTHER INFORMATION CONTACT: Maura Nicholson, Deputy Chief, International Operations Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Suite 3300, Washington, DC 20529, Telephone (202) 272–1892.

SUPPLEMENTARY INFORMATION:

I. Background of the HFRP Program

The rebuilding and development of a safe and economically strong Haiti is a priority for the United States. While progress has been made since the 2010 earthquake that devastated parts of the country, Haiti continues to face significant development challenges. Reconstruction and development in Haiti will continue for many years.[1]

With the exception of ''immediate relatives'' of U.S. citizens (USCs) (*i.e.,* parent, spouse and unmarried child(ren) under 21 years of age), *see* Immigration and Nationality Act (INA) sec. 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i), the number of family-based immigrant visas that are available in any given year is limited by statute. *See* INA secs. 201(c), 202(a) & 203, 8 U.S.C. 1151(c), 1152(a) & 1153. These statutory limits have resulted in long waiting periods before family members remaining in Haiti may join the U.S.C. and lawful permanent resident (LPR) family members in the United States who petitioned for them.

Under the HFRP Program, USCIS will exercise its discretionary parole authority[2] to permit certain eligible Haitians in Haiti to join their family members in the United States up to approximately two years before their immigrant visas become available, thereby promoting family unity. By expanding existing legal means for Haitians to immigrate, the HFRP Program serves a significant public benefit by promoting safe, legal, and orderly migration to the United States. Furthermore, it supports U.S. goals for Haiti's long-term reconstruction and development. Once paroled into the United States, HFRP Program beneficiaries will be eligible to apply for employment authorization, and those who are able to work may contribute to Haiti's post-earthquake reconstruction and development through remittances. Whether to parole a particular alien remains, however, a case-by-case, discretionary determination.

II. Participation in the HFRP Program and Application Process

USCIS offers participation in the HFRP Program to eligible Haitians: (1) In Haiti; (2) who are the beneficiaries (including any accompanying or following-to-join spouse and children[3]) of Forms I–130, Petition for Alien Relative, that were approved on or before the date of publication of this notice; (3) whose immigrant visas are not available, but are expected to become available within approximately 18 to 30 months; and (4) whose petitioning relatives in the United States have received a written invitation to apply for the HFRP Program on their behalf from the Department of State's National Visa Center (NVC).

The NVC will issue a written invitation to petitioners of approved Forms I–130 based upon the date when the immigrant visas for their beneficiary relatives are expected to become available. Each year the NVC will identify approved Forms I–130 whose filing dates (priority dates) are expected to become current in approximately the next 18 to 30 months, meaning that the immigrant visas for those cases are expected to become available within that timeframe. The NVC will prioritize the issuance of invitations to petitioners within that group, beginning with the oldest Form I–130 filing date and working forward to the most recent filing date. The number of HFRP Program invitations may be limited annually based on U.S. Government operational capacity in Haiti and the availability of U.S. Government resources to aid program beneficiaries. Initially, the U.S. Government will seek to interview approximately 5,000 HFRP Program beneficiaries in Haiti per year. Petitioners will be given a deadline by which they must apply to have their beneficiary relatives considered for parole under the program. Participation in the HFRP Program is voluntary.

On or after February 2, 2015, eligible U.S.-based U.S.C. and LPR petitioners with approved Forms I–130 filed on behalf of a beneficiary relative in Haiti for whom a visa is not available but expected to become available within approximately 18 to 30 months, will receive a written notice from the NVC regarding the beneficiary's eligibility to participate in the HFRP Program and the procedures for requesting parole, if desired. The notice will instruct the recipient on how to file a completed Form I–131, Application for Travel Document, and submit the required fee(s) or fee waiver request to apply for parole under the HFRP Program on behalf of each beneficiary. USCIS will reject a request for parole under the HFRP Program that is not submitted as instructed, without the required completed form, or without the fee(s) or a request for a fee waiver.

USCIS or Department of State consular officers will interview qualified beneficiaries in Port au Prince, Haiti, to verify their eligibility for the program. Beneficiaries may also have their biometrics collected. If USCIS exercises its discretion to grant parole under the HFRP Program, USCIS or the Department of State will issue the necessary travel documents to the beneficiary in Haiti. These travel documents will enable the beneficiary to travel to the United States and seek parole from U.S. Customs and Border Protection (CBP) at a U.S. port-of-entry to join his or her family. A beneficiary who is paroled into the United States would then be eligible to apply to adjust status to that of lawful permanent resident once the beneficiary's immigrant visa becomes available.

Participation in the HFRP Program is not available to aliens who qualify as ''immediate relatives'' under section 201(b)(2)(A)(i) of the INA, 8 U.S.C. 1151(b)(2)(A)(i). Such aliens may seek immigrant visas for travel to the United States immediately upon the approval of immigrant visa petitions filed on their behalf. If, however, an immigrant visa becomes available for a beneficiary who is not an ''immediate relative'' while the Form I–131 is pending, the beneficiary will still be able to complete the parole process, if desired. Alternatively, the beneficiary can choose to pursue immigrant visa processing, which will require payment of associated fees, but will enable the individual to apply for admission to the United States as an immigrant, if found eligible by the Department of State for the visa and admissible by CBP at the port of entry.

III. Paperwork Reduction Act (PRA)

Under the PRA, 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval, any new reporting requirements they

[1] *http://www.state.gov/s/hsc/factsheets/2014/219539.htm.*

[2] *See* INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A) (permitting parole of certain aliens into the United States, as a matter of discretion and on a case-by-case basis, for urgent humanitarian reasons or significant public benefit); *see also* 8 CFR 212.5(c) & (d) (discretionary authority for establishing conditions of parole and for terminating parole).

[3] *See* INA sec. 203(d), 8 U.S.C. 1153(d).

impose. The USCIS, Application for Travel Document, (Form I–131), has been approved by OMB and assigned OMB control number 1615–0013. USCIS is making no changes to this form in connection with the implementation of the HFRP Program and this notice. USCIS estimates that the HFRP Program will result in an average of 5,000 Form I–131 filings per year. The current OMB-approved estimated number of annual respondents filing Form I–131 is 940,671. USCIS believes it has overestimated the number of individuals who will use this form to apply for immigration benefits to the degree that additional respondents who will use it to file a HFRP Program-related request will be covered within the 940,671 estimated. Because USCIS is not changing the collection instrument or increasing its burden estimates in connection with this notice, it is publishing no notice under the PRA and making no revisions to the currently approved burden for OMB control number 1615–0013.

Additional information about the HFRP program and the application process will be posted on the USCIS Web site at *www.uscis.gov.*

Dated: December 11, 2014.

León Rodríguez,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. 2014–29533 Filed 12–17–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

[Docket No. ONRR–2014–0002; DS63610000 DR2PS0000.CH7000 145D0102R2]

Office of Natural Resources Revenue; Agency Information Collection Activities: Proposed Collection–United States Extractive Industries Transparency Initiative (USEITI) Revenue Information Collection, Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of a new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on an information request that we will submit to the Office of Management and Budget (OMB) for review and approval. This Information Collection Request (ICR) covers the voluntary paperwork requirements for participation in the United States' implementation of the Extractive Industries Transparency Initiative (EITI). It encompasses upcoming requests that certain companies voluntarily provide information on the amount of revenue which they have paid to the Federal government for extracting Federally-owned natural resources.

DATES: Submit written comments on or before February 17, 2015.

ADDRESSES: You may submit comments on this ICR to ONRR by using one of the following three methods (please use ONRR 2014–0002 as an identifier in your comment):

1. Electronically, go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ONRR–2014–0002 and then click ''Search.'' Follow the instructions to submit public comments. ONRR will post all comments.

2. Mail comments to Mr. Luis Aguilar, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61030A, Denver, Colorado 80225–0165.

3. Hand-carry or mail comments, using an overnight courier service, to ONRR. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Mr. Jon Swedin, Program Analyst, at (303) 231–3028, or email *Jonathan.Swedin@onrr.gov.* For other questions, contact Mr. Luis Aguilar, telephone (303) 231–3418, or email *Luis.Aguilar@onrr.gov.* You may also contact Mr. Aguilar to obtain copies, at no cost, of (1) the ICR, (2) any associated form, and (3) the regulations that require us to collect the information.

SUPPLEMENTARY INFORMATION:

Title: United States Extractive Industries Transparency Initiative (USEITI) Revenue Information Collection.

OMB Control Number: 1012—0NEW.

Bureau Form Number: United States Extractive Industries Transparency Initiative (USEITI) Company Payment Reporting Template.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibility is to manage mineral resources production on Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected under those laws. ONRR performs the royalty management functions and assists the Secretary in carrying out the Department's responsibility. We have posted those laws pertaining to mineral leases on Federal and Indian lands and the OCS at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.*

In September 2011, President Obama announced the U.S. commitment to domestic implementation of EITI, a key element of the President's Open Government Partnership commitments. President Obama appointed the Secretary of the Interior as the senior U.S. official to lead USEITI implementation. EITI is a voluntary global effort designed to strengthen transparency, accountability, and public trust for the revenues paid and received for a country's oil, gas, and mineral resources. The Administration renewed its commitment to implement EITI in the December 2013 U.S. Open Government National Action Plan. By signing onto the global EITI standard, the U.S. Government will help ensure that American taxpayers are receiving every dollar due for the extraction of these valuable public resources. The EITI Standard contains the set of requirements that countries need to meet in order to be recognized first as an EITI Candidate and, ultimately, an EITI-Compliant Country. In March 2014, the U.S. became the first G7 country to achieve Candidate Country status. When fully implemented, EITI will ensure more transparency in how the country's natural resources are governed and also will provide full disclosure of government revenues from its extractive sector.

The following laws and executive initiative are applicable to USEITI, including the Secretary's and ONRR's management of mineral resource production, revenue, and information disclosure obligations:

- U.S. Open Government National Action Plan
- Freedom of Information Act, as amended (5 U.S.C. 552)
- Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331–56b), including provisions of the Energy Policy Act of 2005 (42 U.S.C. 15801 *et seq.*)
- Federal Oil and Gas Royalty Management Act of 1982 as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (30 U.S.C. 1701–1759).
- Geothermal Steam Act of 1970 (30 U.S.C. 1001–28)
- Mineral Leasing Act (30 U.S.C. 181–287)
- Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–60)

General Information

International EITI requirements direct participating governments to publish annual reports to help citizens

understand how governments manage their extractive sectors. The U.S. Open Government National Action Plan commits the U.S. to publish the first United States EITI report in 2015 and to achieve EITI compliance in 2016. An Independent Administrator produces the annual reports, which include parallel public disclosures by both the government and companies, of the payments that companies have made to the government on their oil, gas, and mining development. In order to produce the USEITI annual reports, the Independent Administrator will collect revenue information from extractive companies who meet payment thresholds. The requested information will include the amounts of royalties, rentals, and other payments related to mineral development that companies have made to the Federal Government. The Independent Administrator will not collect items of a sensitive nature such as proprietary data, Personally Identifiable Information, etc. EITI is a voluntary initiative, and companies are not required to provide the requested information.

OMB Approval

We will request OMB approval to collect this information. If the Secretary does not collect this information, the United States will not become an EITI Compliant Country, limiting the Secretary's ability to provide more transparency in how the country's natural resources are governed, including better transparency on our country's revenue collection process.

Frequency: Annually.

Estimated Number and Description of Respondents: 76 extractive companies who meet annual revenue payment thresholds.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden for the 76 extractive companies who meet annual revenue payment thresholds: 5,776 hours.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have not identified a ''non-hour'' cost burden associated with the collection of information.

We have not included in our estimates certain requirements performed in the normal course of business, considered as usual and customary.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.)* provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods that you use to estimate (1) major cost factors, including system and technology acquisition, (2) expected useful life of capital equipment, (3) discount rate(s), and (4) the period over which you incur costs. Capital and startup costs include, among other items, computers and software that you purchase to prepare for collecting information and monitoring, sampling, and testing equipment, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Federal Government; or (iv) as part of customary and usual business, or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you, without charge, upon request. We also will post the ICR at *http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: ONRR will post all comments, including names and addresses of respondents at *http://www.regulations.gov.* Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us, in your comment, to withhold PII from public view, we cannot guarantee that we will be able to do so.

Dated: December 11, 2014.

Kristen Sarri,

Principal Deputy Assistant Secretary, Policy, Management and Budget.

[FR Doc. 2014–29657 Filed 12–17–14; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2014–N217; FXES11130200000–156–FF02ENEH00]

Draft Environmental Assessment and Draft Habitat Conservation Plan; Anderson Tract; Proposed Development of 60.7 Acres in Bexar County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: Under the Endangered Species Act of 1973, as amended, we, the U.S. Fish and Wildlife Service, invite the public to comment on an incidental take permit application for take of the federally listed golden-cheeked warbler, including a draft Habitat Conservation Plan and draft Environmental Assessment; the take would result from clearing and construction of a residential development on the 60.7-acre Anderson Tract in Bexar County, Texas.

DATES: *Comments:* We will accept comments received or postmarked on or before February 17, 2015. Any comments that we receive after the closing date may not be considered in the final decisions on these actions.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's incidental take permit application by one of the following methods. Please refer to the permit number (TE–29216B) when requesting documents or submitting comments.

- *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.
- *Electronically: fw2_hcp_permits@fws.gov.*

• *In-Person:* Copies of the draft EA and draft HCP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:

○ U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.

○ U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, by U.S. mail at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; or via telephone at (512) 490–0057.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), we advise the public that:

We have gathered the information necessary to determine impacts and formulate alternatives for the draft Environmental Assessment (dEA) related to potential issuance of an incidental take permit (ITP) to the Applicant. The Applicant has developed a draft Habitat Conservation Plan (dHCP) as part of the application for an ITP, which describes the measures the Applicant has agreed to take to minimize and mitigate the effects of incidental take of the golden-cheeked warbler (*Setophaga* [=*Dendroica*] *chrysoparia;* GCWA) to the maximum extent practicable pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act).

Anaqua Springs Ranch, Inc. (Applicant), has applied to the U.S. Fish and Wildlife Service (Service) for an ITP (TE–29216B) under section 10(a)(1)(B) of the Act. The proposed take would occur on the 60.7-acre Anderson Tract (Permit Area) in Bexar County, Texas, as a result of activities associated with the Applicant's proposed clearing and construction of a residential development (Covered Activities). Such actions will require clearing of GCWA habitat.

The dEA considers the direct, indirect, and cumulative effects of implementation of the dHCP, including the measures that will be implemented to minimize and mitigate, to the maximum extent practicable, the impacts of the incidental take of the covered species.

Background

In May 2013, the Applicant submitted an ITP application, dHCP, and dEA for proposed incidental take on 60.7 acres in Bexar County, Texas. The Service reviewed and edited the dEA and provided comments on the dHCP.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for the Covered Activities in the Permit Area, pursuant to section 10(a)(1)(B) of the Act. The ITP would cover ''take'' of the Covered Species associated with the clearing and construction of a residential development within the Permit Area.

To meet the requirements of a section 10(a)(1)(B) ITP, the Applicant has developed and proposes to implement its dHCP, which describes the conservation measures the Applicant has agreed to undertake to minimize and mitigate for the impacts of the proposed incidental take of the Covered Species to the maximum extent practicable, and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

The Applicant proposes to mitigate with the purchase of 60.7 acres of high quality habitat, likely from a Service-approved conservation bank with the Anderson Tract in its service area.

Alternatives

Two alternatives to the proposed action we are considering as part of this process are:

1. No Action: No ITP would be issued. Under a No Action alternative, the applicant would not request, and the Service would not issue, an ITP for development of the Anderson Tract, and therefore the Applicant would not implement the conservation measures described in the dHCP.

2. Lower Mitigation: The Lower Mitigation alternative is similar to the Proposed Action in that the Service would issue an ITP for the proposed project. However, the HCP under this alternative would be modified to include the purchase of a lesser number of conservation credits for the GCWA. All other aspects of the proposed project and the HCP would remain the same.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2014–29646 Filed 12–17–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX15EG50DW73200]

Agency Information Collection Activities: Request for Comments on The National Map Corps

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, The National Map Corps.

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR.

DATES: To ensure that your comments on this ICR are considered, we must receive them on or before January 20, 2015.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028—NEW The National Map Corps'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance

Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028—NEW: The National Map Corps' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth McCartney at (573) 308–3696 or *emccartney@usgs.gov.* You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Geological Survey (USGS) has historically sponsored volunteer data collection projects to enhance its topographic paper and digital map products, but these activities were suspended in 2006 due to budget concerns. Since then, new internet technologies have made it easy for citizens to georeference and share many different types of data via online mapping platforms and social networking sites. These data have been referred to as volunteered geographic information (VGI). As a result of these developments, the USGS has reinstated the volunteer data-collection program for *The National Map* (*http://nationalmap.gov*).

Using crowd-sourcing techniques, the USGS VGI project known as ''*The National Map* Corps'' encourages citizen volunteers to collect data about manmade structures in an effort to provide accurate and authoritative spatial map data for the USGS National Geospatial Program's web-based *The National Map.* Citizens collect and/or improve structures data by adding new features, removing obsolete points, and correcting existing data using a web-based mapping platform. Points edited become part of the National Structures Database, and include schools, hospitals, post offices, police stations and other important public buildings. Through their participation, volunteers are able to make significant contributions to the USGS's ability to provide the Nation with accurate mapping information.

We estimate that some users will require a longer session to become acquainted with the interface on their first session. This may be as long as one hour to create an account and review the guidance document. Thereafter, users should be able to make edits to the database in about ten minutes per item being updated.

II. Data

OMB Control Number: 1028—NEW.

Title: The National Map Corps.

Type of Request: Approval of new information collection.

Respondent Obligation: None (participation is voluntary).

Frequency of Collection: Occasional.

Description of Respondents: The general public.

Estimated Total Number of Annual Responses: We estimate that 1,000 people will participate in this volunteer initiative. If they make 75 updates to the Web site that would be 75,000 responses. Counting the updates and the initial sign up, that would be 76,000 responses.

Estimated Time per Response: We estimate that it will take no more than 60 minutes to create an account and join the community. Thereafter it should take no more than 10 minutes to edit a structure point on the Web page.

Estimated Annual Burden Hours: 13,500 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On May 16, 2014 we published a **Federal Register** notice (79 FR 28536) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on July 17, 2014. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Kari J. Craun,

Director, National Geospatial Technical Operations Center.

[FR Doc. 2014–29639 Filed 12–17–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L54400000.EU0000 LVCLG13G5160 13XL5017AR]

Application for Conveyance of Federally Owned Mineral Interests in Doña Ana County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: On August 1, 2014, the City of Las Cruces (the City) submitted an application to the Bureau of Land Management (BLM) for the conveyance of the federally owned mineral interests in the 125-acre parcel of land described in this notice.

DATES: Interested parties may submit written comments to the BLM at the address listed below on or before February 2, 2015.

ADDRESSES: Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005. Detailed information concerning this action is available for review at this address.

FOR FURTHER INFORMATION CONTACT: Anthony Hom, Realty Specialist, at the address above, or by telephone at 575–525–4331, or email to *ahom@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is processing the City's application under section 209 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1719(b), to convey the federally owned mineral interests for 125 acres of public land located in Doña Ana County, New Mexico, to the prospective surface owner, the City. In

a separate transaction, the City is also proposing to obtain a conveyance of the surface interest from the BLM. The City has been leasing 80 acres of this public land and using it as a landfill under the provisions of the Recreation and Public Purposes Act, as amended. The Notice of Realty Action for the surface-interest conveyance published in the **Federal Register** on November 12, 2014 (79 FR 67186). The case file number is NMNM 133158.

The parcel of land referred to in this notice consists of 125 acres of land situated in Doña Ana County, and is described as follows:

New Mexico Principal Meridian, New Mexico

T. 23 S., R. 2 E.,
SEC. 11, W½NW¼NW¼NW¼NE¼, W½SW¼NW¼NW¼NE¼, N½NW¼, N½SW¼NW¼, NW¼SW¼SW¼NW¼, N½SE¼NW¼.

The area described contains 125 acres.

Under certain conditions, Section 209(b) of FLPMA, 43 U.S.C. 1719(b) authorizes the sale and conveyance of the federally owned mineral interest in land to the surface owner when the surface interest is not federally owned. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) Where continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

The lands were segregated from operation of the public land laws, including the general mining law, subject to valid existing rights, when the BLM published the Notice of Realty Action pertaining to the application for conveyance of the land for landfill use under the Recreation and Public Purposes Act. The application is being processed to determine if either one of the two specific FLPMA section 209 conditions exists and, if so, to otherwise comply with the procedural requirements of 43 CFR part 2720 and Section 209 of the FLPMA. The segregative effect of the previously published Notice of Realty Action shall terminate: (1) Upon issuance of a patent or other document of conveyance as to such mineral interests; (2) Upon final rejection of the application; or (3) Two years (August 1, 2016) after the date of filing of the application, whichever occurs first.

Comments: Your comments are invited. Please submit all comments in writing to Anthony Hom at the address listed above.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2720.1–1(b).

Aden L. Seidlitz,

Associate State Director.

[FR Doc. 2014–29690 Filed 12–17–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[LLOR930000.L51010000.ER0000. LVRWH09H0320.14XL5017AP; HAG14–0178]

Notice of Availability of the Jordan Cove Energy and Pacific Connector Gas Pipeline Projects Draft Environmental Impact Statement and the Draft Associated Land Management Plan Amendments

AGENCY: Bureau of Land Management, Interior; Forest Service, USDA.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended; the Federal Land Policy and Management Act of 1976, as amended; and the National Forest Management Act of 1976, as amended (NFMA), the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) have participated as Cooperating Agencies with the Federal Energy Regulatory Commission (FERC) in the preparation of the Jordan Cove Energy and Pacific Connector Pipeline (PCGP) Projects Draft Environmental Impact Statement (EIS). The Draft EIS addresses the impacts of these projects, the associated draft Land Management Plan (LMP) amendments of the BLM and the USFS, and the application to the BLM for a Right-of-Way Grant sought by Pacific Connector Gas Pipeline LP for the PCGP project. With this agency-specific Notice of Availability, the BLM and the USFS are announcing the opening of the FERC comment period.

DATES: To ensure that comments will be considered, the FERC must receive written comments on the draft Jordan Cove Energy and PCGP Projects Draft EIS within 90 days following the date the Environmental Protection Agency published its Notice of Availability (NOA) in the **Federal Register**, which occurred on November 17, 2014. The FERC will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Jordan Cove Energy and PCGP Projects Draft EIS by any of the following methods:

Web site: www.ferc.gov under the Documents and Filings link. The eComment tool is limited to text-only comments on the project. The eFiling tool allows users to submit files in a variety of formats. First-time users of eFiling must first create an account using eRegister.

Mail: Kimberley D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426

Your comments must reference the FERC Docket number(s) (Jordan Cove Energy Project, L.P., Docket No. CP13–483–000 and/or Pacific Connector Gas Pipeline Project, L.P., Docket No. CP13–492–000) to be correctly attributed to this specific project.

Copies of the Jordan Cove Energy and PCGP Projects Draft EIS are available for inspection in the BLM district offices and the offices of the Forest Supervisors listed under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Additional information about the projects is available from the FERC's Office of External Affairs at 866–208–FERC (3372), or on the FERC Web site (*www.ferc.gov*). On the FERC Web site, go to Documents and Filings and click on the eLibrary link. Then click on ''General Search'' and enter the docket number, excluding the last three digits in the field (*i.e.,* CP13–492). For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov,* or toll free at 866–208–3676, or for TTY, contact 202–502–8659. The eLibrary link also provides access to the texts of formal documents issues by the FERC such as orders, notices, and rulemakings.

SUPPLEMENTARY INFORMATION: This NOA is specific to the BLM and the USFS and provides notice that these agencies have participated as cooperating agencies with FERC in the preparation of the Jordan Cove Energy and PCGP Projects

Draft EIS. The comprehensive Draft EIS includes consideration of the proposed actions of the FERC and the cooperating agencies, including a BLM right-of-way grant and the associated BLM and USFS LMP amendments. Following issuance of a FERC-prepared Final EIS, the Bureau of Reclamation and the USFS will determine whether to provide letters of concurrence to the BLM with regard to the issuance of a right-of-way-grant. Through this concurrence process, the Bureau of Reclamation and USFS will submit to the BLM any specific stipulations applicable to lands, facilities, water bodies, and easements for inclusion in the right-of-way grant.

In order for these potential actions to be consistent with the respective BLM Resource Management Plans (RMP) and USFS Land and Resource Management Plans (LRMP), collectively referred to asLMP, a number of amendments to these LMPs would be required prior to authorization of a Right-of-Way Grant for the PCGP Project. The proposed action described in the FERC Draft EIS includes a number of amendments to the BLM and USFS LMPs for the BLM's Coos Bay, Roseburg, and Medford Districts and the Klamath Falls Resource Area of the Lakeview District and the Umpqua, Rogue River, and Winema National Forests. In addition, the proposed action in the Draft EIS includes the Right-of-Way Grant across Federal lands managed by the BLM, USFS, and Bureau of Reclamation.

The FERC is the NEPA Lead Federal Agency for the environmental analysis of the construction and operation of the proposed Jordan Cove Energy and PCGP Projects. The BLM, the Bureau of Reclamation, and the USFS are cooperating agencies with the FERC for the preparation of the FERC Draft EIS.

The BLM's identified Purpose and Need for the proposed action is to respond to a right-of-way grant application submitted by the applicant to the BLM on February 25, 2013, to construct, operate, maintain, and eventually decommission a 234-mile-long, 36-inch-diameter, high-pressure natural gas pipeline between the proposed Jordan Cove Liquefied Natural Gas terminal in Coos Bay, Oregon, and the Malin Hub, where several interstate natural gas pipelines converge near Malin, Oregon. The Secretary of the Interior has delegated authority to the BLM to grant a right-of-way in response to the PCGP application for natural gas transmission on Federal lands under the Mineral Leasing Act of 1920. Before issuing the right-of-way grant, the BLM will acquire the written concurrence of the surface managing Federal agencies. In addition, there is a need for the BLM and the USFS to amend affected LMPs. Although the Bureau of Reclamation has facilities that would be affected by the PCGP, it has not identified any agency-specific actions for analysis in the Draft EIS.

In accordance with 36 CFR 219.17(b)(2), the Deciding Official for the USFS has elected to use the 1982 planning rule procedures to amend U.S. Forest Service LRMPs as provided in the transition procedures of the 2000 planning rule. The 1982 planning rule procedures require the USFS to determine the significance of the draft amendments or alternatives in accordance with national forest planning regulation 36 CFR 219.10(f) (1982 procedures). The USFS will use criteria in Forest Service Manual 1926.5 to make this determination of the significance of draft LRMP amendments.

The following amendments have been drafted by the BLM and the USFS as part of the proposed action in FERC's Draft EIS:

Amendment of the BLM's Coos Bay District, Roseburg District, Medford District, and Klamath Falls Resource Area of the Lakeview District RMPs and the Umpqua National Forest, Rogue River National Forest, and Winema National Forest LMPs

BLM/USFS–1—Applicable BLM RMPs and USFS LMPs would be amended to exempt ''certain known sites'' within the area of the proposed PCGP Project from the Management Recommendations required by the 2001 ''Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines,'' as modified by court order.

Amendment of the BLM Coos Bay District and Roseburg District RMPs

BLM–1—The Coos Bay District and Roseburg District RMPs would be amended to waive the requirements to protect occupied, suitable, and potential habitat for the marbled murrelet, as mapped by the BLM within the proposed PCGP Project area.

Amendments of BLM Roseburg District RMP

BLM–2—The Roseburg District RMP would be amended to exempt the PCGP Project from the requirement to retain habitat in ''Known Owl Activity Centers'' at three locations.

BLM–3—The Roseburg District RMP would be amended to change the designation of approximately 409 acres from the Matrix land allocation to the Late Successional Reserve (LSR) land allocation in Sections 32 and 34, T. 29 1/2 S., R. 7 W., and Section 1, T. 30 S., R. 7 W., W.M., Oregon.

Amendment of BLM Coos Bay District RMP

BLM–4—The Coos Bay District RMP would be amended to change the designation of approximately 387 acres from the Matrix land allocation to the LSR land allocation in Sections 19 and 29, T. 28 S., R. 10 W., W.M., Oregon.

Amendments of the Rogue River National Forest LMP

RRNF–2—The Rogue River National Forest LMP would be amended to change the Visual Quality Objective (VQO) in the area where the PCGP Project corridor would cross the Big Elk Road at pipeline milepost 161.4 in Section 16, T. 37 S., R. 4 E., W.M., Oregon, from ''foreground retention'' to ''foreground partial retention'' and allow more time for amended visual quality objectives to be attained.

RRNF–3—The Rogue River National Forest LMP would be amended to change the VQO in the vicinity where the PCGP Project corridor would cross the Pacific Crest Trail at pipeline milepost 167.84 in Section 32, T. 37 S., R. 5 E., W.M., Oregon, from ''foreground partial retention'' to ''modification'' and allow more time for amended VQOs to be attained.

RRNF–4—The Rogue River National Forest LMP would be amended to allow more time to meet the VQO between the PCGP Project corridor mileposts 156.3 to 156.8 and 157.2 to 157.5 in Sections 11 and 12, T. 37 S., R. 3 E., W.M., Oregon. Standards and Guidelines for ''middleground partial retention'' require that VQOs for a given location be achieved within one year of completion of the project. Approximately 0.8 miles or 9 acres of Middleground Partial Retention VQO visible at distances of 0.75 to 5 miles from State Highway 140 would be affected by this amendment.

RRNF–5—The Rogue River National Forest LMP would be amended to allow the PCGP Project corridor to cross lands subject to the ''restricted riparian management strategy'' Standards and Guidelines. This would potentially affect approximately 2.5 acres of the PCGP Project corridor associated with one perennial stream crossing of the South Fork of Little Butte Creek at milepost 162.45 in Section 15, T. 37 S., R. 4 E., W.M., Oregon.

RRNF–6—The Rogue River National Forest LMP would be amended to waive limitations on areas affected by detrimental soil conditions from displacement and compaction within

the proposed PCGP Project corridor in all affected management areas.

RRNF–7—The Rogue River National Forest LMP would be amended to change the designation of approximately 512 acres from the Matrix land allocation to the LSR land allocation in Section 32, T. 36 S., R. 4 E., W.M., Oregon.

Amendments of the Umpqua National Forest LMP

UNF–1—The Umpqua National Forest LMP would be amended to change the Standards and Guidelines for Fisheries to allow the removal of effective shading vegetation where perennial streams would be crossed by the PCGP Project corridor. This change would potentially affect an estimated three acres of shading vegetation at four perennial stream crossings in the East Fork of Cow Creek from pipeline mileposts 109 to 110 in Sections 16 and 21, T. 32 S., R. 2 W., W.M., Oregon.

UNF–2—The Umpqua National Forest LMP would be amended to change prescriptions C2–II and C2–IV and to allow the PCGP Project corridor to cross Riparian Areas (*i.e.,* Riparian Reserves) and run parallel to the East Fork of Cow Creek for approximately 0.1 mile between milepost 109.68 and 109.78 in Section 21, T. 32 S., R. 2 W., W.M., Oregon. This change would potentially affect approximately one acre of Riparian Reserve along the East Fork of Cow Creek.

UNF–3—The Umpqua National Forest LMP would be amended to waive limitations on the area affected by detrimental soil conditions from displacement and compaction within the proposed PCGP Project corridor. Standards and Guidelines for Soils requires that not more than 20 percent of the project area have detrimental compaction, displacement, or puddling after completion of a project.

UNF–4—The Umpqua National Forest LMP would be amended to change the designation of approximately 588 acres from the Matrix land allocation to the LSR 223 land allocation in Sections 7, 18, and 19, T. 32 S., R. 2 W., and Sections 13 and 24, T. 32 S., R. 3 W., W.M., Oregon.

Amendments of the Winema National Forest LMP

WNF–1—The Winema National Forest LMP would be amended to change the Standards and Guidelines for Management Area 3 (MA–3) to allow for development of the 95-foot-wide PCGP Project corridor in MA–3 from the Forest Boundary in Section 32, T. 37 S., R. 5 E., to the Clover Creek Road corridor in Section 4, T. 38 S, R. 5 E., W.M., Oregon. Standards and Guidelines for MA–3 state that the area is currently an avoidance area for new utility corridors. This amendment would apply to a portion of the proposed PCGP Project corridor that would be approximately 1.5 miles long and occupy approximately 17 acres.

WNF–2—The Winema National Forest LMP would be amended to allow more time to achieve the VQO where the PCGP Project corridor would cross the Dead Indian Memorial Highway at approximately milepost 168.84 in Section 33, T. 37 S., R. 5 E., W.M., Oregon.

WNF–3—The Winema National Forest LMP would be amended to allow more time to meet the VQO for Scenic Management, Foreground Partial Retention, where the PCGP Project corridor would be adjacent to the Clover Creek Road from approximately milepost 170 to 175 in Sections 2, 3, 4, 11 and 12, T. 38 S., R. 5 E., and Sections 7, 17 and 18, T. 38 S., R. 6 E., W.M., Oregon. This amendment would be applicable to approximately 50 acres of the proposed PCGP Project corridor.

WNF–4—The Winema National Forest LMP would be amended to waive restrictions on detrimental soil conditions from displacement and compaction within the proposed PCGP Project corridor in all affected management areas.

WNF–5—The Winema National Forest LMP would be amended to waive restrictions on detrimental soil conditions from displacement and compaction within the proposed PCGP Project corridor within Management Area 8, Riparian Area (MA–8). This amendment would be applicable to approximately 0.5 mile or an estimated 9.6 acres of MA–8. Standards and Guidelines for Soil and Water, MA–8 require that not more than 10 percent of the total riparian zone in an activity area be in a detrimental soil condition upon the completion of a project.

Copies of the Jordan Cove Energy and PCGP Projects Draft EIS are available for inspection in the BLM's Coos Bay, Roseburg, and Medford District offices; the Klamath Falls Resource Area of the Lakeview District office; and at the offices of the Forest Supervisors for the Rogue River, Umpqua, and Winema National Forests.

Consistent with BLM land use planning regulations at 43 CFR 1610.2(f)(3), the BLM is requesting comments on the draft amendments of BLM RMPs that are necessary to allow for the PCGP Project in the Coos Bay, Roseburg, and Medford Districts and Klamath Falls Resource Area of the Lakeview District. The BLM is also requesting public comments on the issuance of a right-of-way grant that would allow the PCGP to to be constructed on Federal lands managed by the BLM, USFS, and Reclamation. The USFS is requesting public comments on the draft amendments of USFS LMPs to allow for the PCGP Project on the Rogue River, Umpqua, and Winema National Forests. Reclamation is not offering plan amendments and is not requesting specific comments. All comments must be submitted to the FERC, the Lead Federal Agency. You may submit comments in writing at any public meeting, or you may submit comments to the FERC using one of the methods listed in the ''**ADDRESSES**'' section above. As noted above, the comment period on the Draft EIS has already commenced following publication of the NOA by EPA.

Refer to Dockets CP13–483–000 [Jordan Cove Energy Project] and/or CP13–492–000 [Pacific Connector Gas Pipeline Project] in all correspondence to ensure that your comments are correctly filed in the record for the Jordan Cove Energy and PCGP Projects.

The FERC offers a free service called e-subscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents at: *http://www.ferc.gov/docs-filing/esubscription.asp.*

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that the entire text of your comments—including your personal identifying information—would be publicly available through the FERC eLibrary system, if you file your comments with the Secretary of the Commission.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Jerome E. Perez,

State Director, Oregon/Washington.

Alice Carlton,

Forest Supervisor, Umpqua National Forest.

[FR Doc. 2014–29654 Filed 12–17–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000.L17110000.AL0000. 15XL1109AF.HAG15–0048]

Meeting of the San Juan Islands National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) San Juan Islands National Monument Advisory Committee (MAC) will meet as indicated below.

DATES: The MAC will meet Thursday, January 22, 2015, from 10:15 a.m.–3:45 p.m. at the San Juan Island Grange, 152 N 1st Street, Friday Harbor, Washington 98250. The meeting will include a ''virtual fieldtrip'' of the different resources on the Monument, a review of the March 25, 2013 Presidential Proclamation and the Monument Resource Management Plan's (RMP) draft purpose and needs, a discussion of the current Analysis of the Management Situation, and finalization of the RMP's vision statement and plan for public scoping forums. The meeting will conclude with a public comment period.

FOR FURTHER INFORMATION CONTACT: Marcia deChadenèdes, San Juan Islands National Monument Manager, P.O. Box 3, 37 Washburn Ave., Lopez Island, Washington 98261, (360) 468–3051, or *mdechade@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The twelve member San Juan Islands MAC was chartered to provide information and advice regarding the development of the San Juan Islands National Monument's RMP. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide. Planned agenda items include training on the Federal Advisory Committee Act, advisory committee procedures, the RMP process, MAC goal setting, and a collaborative project on public outreach. On January 22, 2015, at 2:45 p.m., members of the public will have the opportunity to make comments to the MAC during a one-hour public comment period. All advisory committee meetings are open to the public. Persons wishing to make comments during the public comment period should register in person with the BLM by 2 p.m. on January 22, 2015, at the meeting location. Depending on the number of persons wishing to comment, the length of comments may be limited. The public may send written comments to the MAC at San Juan Islands National Monument, Attn. MAC, P.O. Box 3, 37 Washburn Ave., Lopez Island, Washington 98261. The BLM appreciates all comments.

Daniel C. Picard,

Spokane District Manager.

[FR Doc. 2014–29642 Filed 12–17–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X LLAK910000 L13100000.DB0000 LXSINSSI0000]

Call for Nominations North Slope Science Initiative, Science Technical Advisory Panel, Alaska

AGENCY: Bureau of Land Management, North Slope Science Initiative, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations to serve on the North Slope Science Initiative, Science Technical Advisory Panel (STAP). The STAP provides advice and recommendations to the North Slope Science Initiative Oversight Group on issues such as identifying and prioritizing inventory, monitoring and research needs, and providing other scientific information as requested by the Oversight Group.

DATES: All nominations must be received no later than February 2, 2015.

FOR FURTHER INFORMATION CONTACT: Dennis Lassuy, Deputy Director and Acting Designated Federal Officer, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 West 7th Avenue, #13, Anchorage, AK 99513, 907–271–3212, or email at *dlassuy@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The legislative purpose of the North Slope Science Initiative, Science Technical Advisory Panel is to advise the North Slope Science Initiative Oversight Group on issues such as identifying and prioritizing inventory, monitoring and research needs, and providing other scientific information as requested by the Oversight Group (Section 348, Energy Policy Act of 2005, Public Law 109–58). The Oversight Group membership includes the Alaska Regional Directors of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, and National Marine Fisheries Service; the Bureau of Land Management Alaska State Director; the Commissioners of the Alaska Departments of Natural Resources and Fish and Game; the Mayor of the North Slope Borough; and the President of Arctic Slope Regional Corporation. Advisory members of the Oversight Group include the Regional Executive, U.S. Geological Survey; Deputy Director, U.S. Arctic Research Commission; Alaska Regional Director, National Weather Service; and the Regional Coordinator for the National Oceanographic and Atmospheric Administration.

The STAP consists of a representative group of not more than 15 scientists and technical experts from diverse professions and interests, including the oil and gas industry, subsistence users, Alaska Native entities, conservation organizations, and academia, as determined by the Secretary of the Interior. The members are selected from among, but not limited to, the following disciplines: North Slope traditional and local knowledge, landscape ecology, petroleum engineering, civil engineering, geology, sociology, cultural anthropology, economics, ornithology, oceanography, fisheries, marine biology, landscape ecology, and climatology.

Duties of the STAP are solely advisory to the Oversight Group, which will provide direction regarding priorities for decisions needed for the management of resources on the North Slope of Alaska and the adjacent marine environment. Duties could include, but are not limited to, the following:

a. Advise the Oversight Group on science planning and relevant inventory, monitoring and research projects necessary for management decisions;

b. Advise the Oversight Group on scientific information relevant to the mission of the North Slope Science Initiative;

c. Review selected reports and advise the Oversight Group on their content and relevance;

d. Review ongoing scientific programs of the North Slope Science Initiative member organizations at the request of the membership to promote compatibility in methodologies and compilation of duties;

e. Advise the Oversight Group on how to ensure scientific products generated through the North Slope Science Initiative activities are of the highest technical quality;

f. Provide scientific advice as requested by the Oversight Group; and,

g. Coordinate with groups, committees and sub-committees as requested by the Oversight Group.

Qualifications and Procedures Required for Nomination

All membership will consist of individuals with a minimum of 5 years of work experience in Alaska in their field of expertise. Work experience in the North Slope is preferred. Individuals will be selected from among, but not limited to, those disciplines and entities described above. Any individual or organization may nominate one or more persons, including themselves, to serve on the Science Technical Advisory Panel. Members will be appointed for 3-year terms. Current Science Technical Advisory Panel appointees may be reappointed for additional terms at the discretion of the Secretary of the Interior. Under current Administration policy, federally registered lobbyists may not serve on the panel.

How to Nominate

Nomination forms may be obtained from the North Slope Science Initiative Web site (*http://www.northslope.org*), or from the Deputy Director, North Slope Science Initiative (see **FOR FURTHER INFORMATION CONTACT,** above). To make a nomination, or to self-nominate, submit a completed nomination form with a minimum of one letter of reference that describes the nominee's qualifications to serve on the STAP. The professional discipline the nominee would represent should be identified in the reference letter of nomination and in the nomination form. Nominees may be scientists and technical experts from diverse professions and interests, including, but not limited to, oil and gas industry, subsistence users, Alaska Native entities, conservation organizations or academia. Nominees appointed to serve on the STAP will serve only in their professional capacity and will not serve to represent any group, agency or entity with whom they may be affiliated.

The Deputy Director, North Slope Science Initiative, will collect the nomination forms and letters of reference and distribute them to the Oversight Group for consideration. The collective recommendations of the Oversight Group will be submitted to the Secretary of the Interior, who has the responsibility for making appointments.

Members of the STAP will serve without monetary compensation, but will be reimbursed for travel, lodging and per diem expenses to participate in announced meetings.

Certification:

I hereby certify the Science Technical Advisory Panel is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities, and in compliance with Section 348, Energy Policy Act of 2005 (Public Law 109–58).

Authority: 43 CFR 1784.4–1.

Ted A. Murphy,

Associate State Director.

[FR Doc. 2014–29679 Filed 12–17–14; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–513 and 731–TA–1249 (Final)]

Countervailing Duty and Antidumping Duty Investigations; Sugar From Mexico; Scheduling of the Final Phase

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–513 and 731–TA–1249 (Final) under sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 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 subsidized and less-than-fair-value imports from Mexico of sugar, provided for in statistical subheadings 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1025, 1701.99.1050, 1701.99.5025, 1701.99.5050, and 1702.90.4000 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).

DATES: Effective Dates: Monday, November 03, 2014.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), 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:

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''sugar derived from sugar cane or sugar beets. Sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked via their anomeric carbons. The molecular formula for sucrose is $C_{12}H_{22}0_{11}$, the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/$C_{12}H_{22}O_{11}$/c13-l-4-6(16)8(18)9(19)11(21-4)23–12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1, the InChI Key for sucrose is CZMRCDWAGMRECN–UGDNZRGBSA–N, the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988, and the Chemical Abstracts Service (CAS) Number of sucrose is 57–50–1.

Sugar within the scope of this investigation includes raw sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of less than 99.5 degrees) and estandar or standard sugar which is sometimes referred to as ''high polarity'' or ''semi-refined'' sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of 99.2 to 99.6 degrees). Sugar within the scope of this investigation includes refined sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees. Sugar within the scope of this investigation includes brown sugar, liquid sugar (sugar dissolved in water), organic raw sugar and organic refined sugar.

Inedible molasses is not within the scope of this investigation. Specialty sugars, *e.g.,* rock candy, fondant, sugar decorations, are not within the scope of this investigation. Processed food products that contain sugar, *e.g.,* beverages, candy, cereals, are not within the scope of this investigation.''

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Mexico of sugar, and that such products 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 Friday, March 28, 2014, by the American Sugar Coalition and its members: American Sugar Cane League, Thibodaux, LA; American Sugarbeet Growers Association, Washington, DC; American Sugar Refining, Inc., West Palm Beach, FL; Florida Sugar Cane League, Washington, DC; Hawaiian Commercial and Sugar Company, Puunene, HI; Rio Grande Valley Sugar Growers, Inc., Santa Rosa, TX; Sugar Cane Growers Cooperative of Florida, Belle Glade, FL; and United States Beet Sugar Association, Washington, DC.

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 Tuesday, March 3, 2015, 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 Tuesday, March 17, 2015, 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 Wednesday, March 11, 2015. 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 Friday, March 13, 2015, 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 Tuesday, March 10, 2015. 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 Tuesday, March 24, 2015. 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 Tuesday, March 24, 2015. On Wednesday, April 8, 2015, 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 Friday, April 10, 2015, 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: December 15, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–29648 Filed 12–17–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–474 and 731–TA–1176 (Final) (Remand)]

Drill Pipe and Drill Collars From China

Determination

The United States International Trade Commission (Commission) hereby publishes notice of its final determinations pursuant to the remand ordered by the U.S. Court of International Trade (Court) in the antidumping and countervailing duty investigations of drill pipe and drill collars from China. On the basis of the Court's remand instructions and the

parties' comments, and the record [1] developed in the subject investigations, the Commission determined, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), that an industry in the United States is neither materially injured nor threatened with material injury by reason of subject imports of drill pipe and drill collars from China, provided for in subheadings 7304.22, 7304.23, and 8431.43 of the Harmonized Tariff Schedule of the United States, that are subsidized and sold in the United States at less than fair value.[2] [3]

Background

In February 2011, by a vote of 3 to 3, the Commission issued affirmative threat of injury determinations in the antidumping and countervailing duty determinations of drill pipe and drill collars from China.[4] Chinese Respondent Downhole Pipe & Equipment, LP appealed the Commission's determinations to the Court. On August 19, 2013, the Court remanded the Commission's affirmative threat determinations. *Downhole Pipe & Equipment, LP* v. *United States,* Slip Op. 13–108 (Aug. 19, 2013). On December 11, 2013, by a vote of 3 to 2, the Commission issued negative remand determinations in the above-captioned proceedings. On November 10, 2014, the Court issued an opinion affirming the Commission's negative determinations on remand. *Downhole Pipe & Equipment, LP* v. *United States,* Slip Op. 14–130 (Nov. 10, 2014).

Issued: December 12, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–29574 Filed 12–17–14; 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)).

[2] Commissioners Irving A. Williamson and Dean A. Pinkert dissented, finding that an industry in the United States is threatened with material injury by reason of the subject imports.

[3] Commissioner F. Scott Kieff did not participate in the remand proceedings.

[4] Commissioners Williamson, Pinkert and Charlotte R. Lane voted in the affirmative. Chairman Deanna Tanner Okun and Commissioners Pearson and Shara L. Aranoff dissented.

DEPARTMENT OF LABOR

Employment and Training Administration

[Funding Opportunity Number: FOA–ETA–15–01]

Notice of Availability of Funds and Funding Opportunity Announcement for the National Guard Youth ChalleNGe and Job ChalleNGe Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Funding Opportunity Announcement (FOA).

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor, announces the availability of approximately $12,000,000 in grant funds authorized by Section 171, Pilot and Demonstration Projects, of the Workforce Investment Act, to: (1) Test the effectiveness of expanding the National Guard Youth ChalleNGe Program for youth who have come in contact with the juvenile justice system for committing a status offense or a delinquent act (court-involved youth), and (2) add and test an additional job training component (DOL Job ChalleNGe) to the program for court-involved youth and youth that have had no contact with the juvenile justice system (non-court-involved youth).

The purpose of this program is to improve the long-term labor market prospects of youth who successfully complete the six-month residential phase of the National Guard Youth ChalleNGe program. The DOL Job ChalleNGe component will build on the Youth ChalleNGe program's eight core components—academic excellence, life coping skills, job skills, health and hygiene, responsible citizenship, community service, leadership/followership, and physical fitness—by emphasizing programming focused on improving program participants' employment outcomes.

The complete FOA and any subsequent FOA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov*. The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications under this announcement is January 27, 2015. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Pia Miller, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3153.

The Grant Officer for this FOA is Melissa Abdullah.

Signed December 12, 2014 in Washington, DC

Eric D. Luetkenhaus,

Grant Officer/Division Chief, Employment and Training Administration.

[FR Doc. 2014–29585 Filed 12–17–14; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–133)]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, January 12, 2015, 8:00 a.m. to 5:30 p.m.; and Tuesday, January 13, 2015, 8:30 a.m. to 5:15 p.m., Local Time.

ADDRESSES: NASA Stennis Space Center, Roy S. Estess Building, Santa Rosa Conference Room 11111 (January 12, 8:00 a.m. to 12:00 p.m.), Logtown Conference Room 11161 (January 12, 1:00 p.m. to 5:30 p.m.) and the Santa Rosa Conference Room 11111 (January 13, 8:30 a.m. to 5:15 p.m.), Stennis Space Center, MS 39529–6000.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number 800–988–9663, pass code 8015, to participate in this meeting by telephone on both

days. A toll number also is available, 517–308–9483 for January 12, and 517–308–9054 for January 13, pass code 8015 for each day. The WebEx link is *https://nasa.webex.com/*; the meeting number on January 12 beginning at 8:00 a.m. through 12:00 p.m. is 992 598 539, and the password is Science@Jan12 (case sensitive). The meeting number on January 12 beginning at 1:00 p.m. through 5:30 p.m. is 994 136 621, and the password is ScienceHEO@Jan12 (case sensitive). The meeting number on January 13 is 994 285 340 and the password is Science@Jan13 (case sensitive). The agenda for the meeting includes the following topics:

—Research and Analysis
—Ad Hoc Task Force on Big Data
—Technology Infusion
—Subcommittee Reports
—Joint Session with NAC Human Exploration and Operations Committee
—Human Exploration and Operations Mission Directorate/Science Mission Directorate Joint Activities
—Evolvable Mars Campaign

The meeting will be open to the public up to the seating capacity of the rooms. Attendees will be required to sign a register and comply with NASA Stennis Space Center security requirements, including the presentation of a valid picture ID before receiving access to NASA Stennis Space Center. Due to the Real ID Act, any attendees with drivers licenses issued from non-compliant states must present a second form of ID [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Louisiana, Maine, Minnesota, New York, Oklahoma and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 20 days prior to the meeting: full name; home address; gender; citizenship; date/city/country of birth; title, position or duties; visa type, number and expiration date; passport number, expiration date and country of issue; green card number; and employer/affiliation information (name of institution, address, country, telephone, email, phone). Contact the International Visitor Coordinator, Mary Treat, at (228) 688–3916 for the specifics on any foreign national visitors. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by emailing the NASA Office of Communications at *SSC-PAO@mail.nasa.gov*. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–29623 Filed 12–17–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–134)]

NASA Advisory Council; Human Exploration and Operations Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration and Operations Committee of the NASA Advisory Council.

DATES: Monday, January 12, 2015, 1:00 p.m. to 5:30 p.m.; and Tuesday, January 13, 2015, 9:30 a.m. to 5:30 p.m., Local Time.

ADDRESSES: NASA Stennis Space Center, Roy S. Estess Building, Logtown Conference Room 11161 (January 12) and Conference Center Room 107 (January 13), Stennis Space Center, MS 39529–6000.

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2245, or *bette.siegel@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. On January 12, any interested person may dial the toll free access number 1–800–988–9663 or toll access number 1–517–308–9483, and then the numeric participant passcode: 8015, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number is 994 136 621, and the password is ScienceHEO@Jan12 (case sensitive).

On January 13, any interested person may dial the toll free access number 1–888–469–0647 or toll access number 1–203–827–7016, and then the numeric participant passcode: 5106584 followed by the # sign, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number is 992 536 249, and the password is Exploration@2015 (case sensitive).

The agenda for the meeting includes the following topics:

—Joint Session with Science Committee of the NASA Advisory Council
—NASA Human Exploration and Operations Mission Directorate/NASA Science Mission Directorate Joint Activities
—Evolvable Mars Campaign
—Status of the NASA Human Exploration Operations Mission Directorate
—Asteroid Redirect Mission Update
—Status of the Exploration Systems Development Division
—Status of the International Space Station
—Lessons Learned From Commercial Orbital Transportation Services

Attendees will be required to sign a register and comply with NASA Stennis Space Center security requirements, including the presentation of a valid picture ID before receiving access to NASA Stennis Space Center. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states must present a second form of ID [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Louisiana, Maine, Minnesota, New York, Oklahoma and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 20 days prior to the meeting: full name; home address; gender; citizenship; date/city/country of birth; title, position or duties; visa type, number and expiration date; passport

number, expiration date and country of issue; and employer/affiliation information (name of institution, address, country, telephone, email, phone). Contact the International Visitor Coordinator, Mary Treat, at (228) 688–3916 for the specifics on any foreign national visitors. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by emailing the NASA Office of Communications at *SSC–PAO@mail.nasa.gov.* It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–29624 Filed 12–17–14; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Renewal

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Advisory Committee on Reactor Safeguards (ACRS).

SUMMARY: The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 4, 2016, is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, NRC, Washington, DC 20555; by telephone: (301) 415–1963, or email at *ALB@NRC.GOV.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) of 1954, as amended. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA as amended by PL 100–456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering.

Dated: December 8, 2014.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2014–29194 Filed 12–17–14; 8:45 a.m.]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2014–0266]

Duke Energy Florida, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a July 17, 2013, request from Duke Energy Florida, Inc. (DEF or the licensee), from certain regulatory requirements. The exemption would remove the requirement that a licensed senior operator approve the emergency suspension of security measures for Crystal River Unit 3 Nuclear Generating Plant (CR3) during certain emergency conditions or during severe weather.

DATES: December 18, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0266 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0266. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael Orenak, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3229; email: *Michael.Orenak@nrc.gov.*

I. Background

Duke Energy Florida, Inc., is the holder of Facility License No. DPR–72. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

The facility consists of a permanently shutdown and defueled pressurized water reactor located in Citrus County, Florida.

By letter dated February 20, 2013 (ADAMS Accession No. ML13056A005), DEF submitted to the NRC the certification in accordance with §§ 50.82(a)(1)(i) and 50.82(a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR) indicating it permanently ceased power operations and that the CR3 reactor vessel was permanently defueled.

II. Request/Action

On July 17, 2013 (ADAMS Accession No. ML13204A397), the licensee requested an exemption from §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii), pursuant to § 73.5, ''Specific exemptions,'' which requires, in part, that a licensed senior operator approves the suspension of security measures during certain emergency conditions or during severe weather. Portions of the letter dated July 17, 2013, contain sensitive unclassified nonsafeguards information (security-related) and, accordingly, have been withheld from public disclosure. The regulations in §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii), respectively, specify that the suspension of security measures must be approved by, as a minimum, a licensed senior operator, or a licensed senior operator with input from the security supervisor or manager.

The exemption request relates solely to the licensing requirements specified in the regulations for the staff directing suspension of security measures in

accordance with §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii). Section 73.55(p)(1)(i) requires that ''suspension of security measures must be approved as a minimum by a licensed senior operator before taking this action;'' § 73.55(p)(1)(ii) requires that ''suspension of security measures must be approved, as a minimum, by a licensed senior operator, with input from the security supervisor or manager, before taking this action.''

This exemption would remove the requirement for a licensed senior operator to provide the approval. Instead, the licensee intends that suspension of security measures to be authorized by a certified fuel hander (CFH), as defined by § 50.2, ''Definitions.''

III. Discussion

Historically, the Commission's security rules have long recognized the potential need to suspend security or safeguards measures. In 1986, in its final rule, ''Miscellaneous Amendments Concerning the Physical Protection of Nuclear Power Plants'' (51 FR 27817; August 4, 1986), the Commission promulgated § 73.55(a), stating in part:

> In accordance with § 50.54(x) and (y) of Part 50, the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specification that can provide adequate or equivalent protection is immediately apparent. This suspension must be approved as a minimum by a licensed senior operator prior to taking the action.

Later, in Proposed Rule, ''Decommissioning of Nuclear Power Plants,'' July 20, 1995; 60 FR 37379, the Commission made a number of proposed rule changes to address decommissioning. Among the changes were new regulations that affected §§ 50.54(x) and (y) by allowing a non-licensed operator called a ''Certified Fuel Handler,'' in addition to a licensed senior operator, to authorize protective steps. Specifically, when proposing the rule addressing the role of the CFH during emergencies, the Commission stated:

> The Commission is proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of ''Certified Fuel Handler'' specified in § 50.2, to make these evaluations and judgments. A nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the final rule (61 FR 39298; July 29, 1996), the Commission added the following definition to § 50.2: ''*Certified fuel handler* means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.'' However, the Decommissioning Rule did not propose or make parallel changes to § 73.55(a), and did not discuss the role of a non-licensed certified fuel handler.

In the final rule, ''Power Reactor Security Requirements'' (74 FR 13926; March 27, 2009), the NRC relocated and split the security suspension requirements from § 73.55(a) to §§ 73.55(p)(1)(i) and (p)(1)(ii). The CFHs were not discussed in the rulemaking, so the requirements of § 73.55(p) to use a licensed senior operator remains, even for a site that otherwise no longer has an operating reactor.

However, pursuant to § 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. Authorized by Law

The exemption from §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii) would remove the requirement that a licensed senior operator approve the suspension of security measures, under certain emergency conditions or severe weather. The licensee intends to align these regulations with § 50.54(y) by using the authority of a non-licensed CFH in place of a licensed senior operator to approve the suspension of security measures during certain emergency conditions or during severe weather.

Per § 73.5, the Commission is allowed to grant exemptions from the regulations in 10 CFR part 73 as authorized by law. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the exemption is authorized by law.

B. Will Not Endanger Life or Property or the Common Defense and Security

Removing the requirement to have a licensed senior operator approve suspension of security measures during emergencies or severe weather will not endanger life or property or the common defense and security for the reasons described below.

First, § 73.55(p)(2) continues to require that ''[s]uspended security measures must be reinstated as soon as conditions permit.''

Second, the suspension for non-weather emergency conditions under § 73.55(p)(1)(i) will continue to be invoked only ''when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.'' Thus, the underlying purpose of § 73.55(p)(1)(i) will still be to protect public health and safety even after the exemption is granted.

Third, the suspension for severe weather under § 73.55(p)(1)(ii) will continue to be used only when ''the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection.'' The requirement to receive input from the security supervisor or manager will remain. The underlying purpose of § 73.55(p)(1)(ii) will continue to be to protect the health and safety of the security force.

Additionally, by letter dated June 26, 2014 (ADAMS Accession No. ML14155A181), the NRC approved DEF's CFH training and retraining program for the CR3 facility. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because the CFH is sufficiently trained and qualified under an NRC-approved program, the NRC staff considers a CFH to have sufficient knowledge of operational and safety concerns such that there will be no adverse effects or undue risk to the public health and safety as a result of the suspension of security measures during the emergencies or severe weather.

In addition, the exemption does not reduce the overall effectiveness of the physical security plan and has no adverse impacts to DEF's ability to physically secure the site or protect special nuclear material at CR3, and thus would not have an effect on the common defense and security. The NRC

staff has concluded that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Therefore, removing the requirement for a licensed senior operator to approve the suspension of security measures in an emergency or during severe weather so that suspension of security measures can be authorized by CFH does not adversely affect public health and safety issues or the assurance of the common defense and security.

C. Is Otherwise in the Public Interest

The DEF's proposed exemption would remove the requirement that a licensed senior operator approve suspension of security measures in an emergency when ''immediately needed to protect the public health and safety'' or during severe weather when ''immediately needed to protect the personal health and safety of security force personnel.'' Without the exemption, the licensee cannot implement changes to its security plan to authorize a CFH to approve temporary suspension of security regulations during an emergency or severe weather comparable to the authority given to the CFH by the Commission when it promulgated § 50.54(y). Instead, the regulations would continue to require that a licensed senior operator be available to make decisions for a permanently shutdown plant, even though CR3 no longer requires a licensed senior operator. It is unclear how the licensee would implement emergency or severe weather suspensions of security measures without a licensed senior operator. This exemption is in the public interest for two reasons. First, without the exemption, there is uncertainty on how the licensee will invoke temporary suspension of security matters that may be needed to protect public health and safety or the safety of the security forces during emergencies and severe weather. Additionally, the consistent and efficient regulation of nuclear power plants serves the public interest by assuring consistency between the security regulations in 10 CFR part 73 and the operating reactor regulations in 10 CFR part 50, and the requirements concerning licensed operators in 10 CFR part 55. Accordingly, the NRC staff concludes that the exemption requirements to obtain approval from a licensed senior operator, who is not otherwise required for a permanently shutdown and defueled reactor, before taking steps to protect the public health and safety, or to protect the safety of the security force, is in the public interest.

D. Environmental Considerations

The NRC approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under § 51.22(c)(25).

Under § 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: safeguard plans, and materials control and accounting inventory scheduling requirements; or involve other requirements of an administrative, managerial, or organizational nature.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because removing the requirement to have a licensed senior operator approve the security suspension at a defueled shutdown power plant does 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 exempted security regulation is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident), nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirement to have a licensed senior operator approve departure from security actions may be viewed as involving either safeguards, materials control, or managerial matters.

Therefore, pursuant to §§ 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to § 73.5, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants DEF exemption from the requirements of §§ 73.55(p)(1)(i) and 73.55(p)(1)(ii), which otherwise would require suspension of security measures during emergencies and severe weather, respectively, to be approved by a licensed senior operator. The exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of December 2014.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–29656 Filed 12–17–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0178]

Standard Review Plan for Conventional Uranium Mills and Heap Leach Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG–2126, ''Standard Review Plan for Conventional Uranium Mills and Heap Leach Facilities.'' The NRC has developed draft NUREG–2126 to provide guidance for NRC staff reviews of applications to develop and operate conventional uranium mills and heap leach facilities and to ensure a consistent quality and uniformity of staff reviews.

DATES: Submit comments by March 18, 2015. Comments received after this date

will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments 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–2014–0178. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Douglas T. Mandeville, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–0724, email: *douglas.mandeville@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0178 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0178.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Draft NUREG–2126 is available in ADAMS under Accession No. ML14325A634.

• *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–2014–0178 in the subject line of your comment submission.

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. Discussion

Under the provisions of part 40 of Title 10 of the *Code of Federal Regulations,* ''Domestic Licensing of Source Material,'' an NRC materials license is required to conduct uranium recovery by conventional mill or heap leach techniques. Applicants for a new license and operators seeking an amendment or renewal of an existing license are required to provide detailed information on the facilities, equipment, and procedures used in the proposed activities. This information is used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment. Each section in the Draft NUREG–2126 provides guidance on what information is to be reviewed, the basis for the review, how the NRC staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with applicable regulations, and the evaluation criteria for determining compliance with the applicable regulations. Draft NUREG–2126 is intended to improve the understanding of the NRC staff's review process by interested members of the public and the uranium recovery industry. Any interested party may submit comments on draft NUREG–2126 for consideration by the NRC staff.

Dated at Rockville, Maryland, this 8 th day of December 2014.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2014–29663 Filed 12–17–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374; NRC–2014–0268]

LaSalle County Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application for the renewal of operating licenses NPF–11 and NPF–18, which authorize Exelon Generation Company, LLC (the applicant) to operate LaSalle County Station (LSCS), Units 1 and 2. The renewed licenses would authorize the applicant to operate LSCS, Units 1 and 2, for an additional 20-year period beyond the periods specified in each of the current licenses. The current operating licenses for LSCS, Units 1 and 2, expire on April 17, 2022, and December 16, 2023, respectively.

DATES: The license renewal application referenced in this document is available on December 18, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0268 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0268. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select

''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The license renewal application is available in ADAMS under Accession No. ML14343A849.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mitchell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3019; email: *Jeffrey.Mitchell2@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has received an application, from Exelon Generation Company, LLC dated December 9, 2014, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Part 54 of Title 10 of the *Code of Federal Regulations,* to renew the operating licenses for LSCS, Units 1 and 2. Renewal of the licenses would authorize the applicant to operate the facilities for an additional 20-year period beyond the periods specified in the respective current operating licenses. The current operating licenses for LSCS, Units 1 (NPF–11) and 2 (NPF–18), expire at midnight on April 17, 2022, and December 16, 2023, respectively. The LSCS, Units 1 and 2, are boiling-water reactors designed by General Electric and are located in Brookfield Township, LaSalle County, Illinois. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

A copy of the license renewal application for LSCS, Units 1 and 2, is also available to local residents near the site at the Reddick Public Library District, 1010 Canal St., Ottawa, IL 61350, Marseilles Public Library, 155 East Bluff St., Marseilles, IL 61341, and Seneca Public Library District, 210 N. Main St., Seneca, IL 61360.

Dated at Rockville, Maryland, this 11th day of December 2014.

For the Nuclear Regulatory Commission.

Christopher G. Miller,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–29667 Filed 12–17–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73832; File No. SR–CBOE–2014–092]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

December 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective December 1, 2014. First, the Exchange proposes to amend the Trade Processing Services fee. Currently, the Exchange assesses a $0.0025 fee per contract side for each matched and unmatched trade. The Exchange notes that unmatched trades are also charged if and when they become matched. As such, the Exchange does not believe it's necessary to charge unmatched trades the Trading Processing Fee, as the trades ultimately will be charged once matched. The Exchange further notes that when the fee was adopted, the billing processes were done manually and the fee helped offset the work involved in processing each of the trades, both matched and unmatched. The Exchange notes that this billing process is now automated and does not believe it is necessary to continue to bill unmatched trades. The Exchange additionally proposes to explicitly state in the Fees Schedule that for billing purposes, the Trade Processing Services fee will be rounded to the nearest $0.01 using standard rounding rules on a monthly basis.

Currently, the Fees Schedule states that the quoting bandwidth allowance for a Market-Maker Trading Permit is equivalent to a maximum of 32,400,000 quotes over the course of a trading day. The Exchange intends to increase quoting bandwidth allowance by 10%. As such, the Exchange seeks to make a corresponding amendment to the Fees Schedule. Specifically, the Exchange proposes to update the number of maximum quotes over the course of trading day from 32,400,000 to 35,640,000. The Exchange notes that the increase of quoting bandwidth allowance applies to all Market-Maker Trading Permits and all Quoting and Order Entry Bandwidth Packets.

The Exchange always strives for clarity in its rules and Fees Schedule, so that market participants may best understand how rules and fees apply. As such, the Exchange proposes to clarify its use of the terms ''multiply-listed'' (or ''multi listed'') and ''single-listed'' options classes in the Fees Schedule. In conjunction with these clarifying changes, the Exchange also proposes to use the term ''Underlying Symbol List A'' in the Fees Schedule to refer to a specific set of proprietary products (*i.e.,* OEX, XEO, SPX (including SPXw), SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES and binary options).

By way of background, the Exchange notes that a specific set of proprietary products are commonly listed out in the Fees Schedule as being included or excluded from a variety of programs, qualification calculations and transactions fees. In lieu of listing out

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

these products in various sections of the Fees Schedule, the Exchange proposes to use the term ''Underlying Symbol List A,'' to represent these products, which the Exchange believes will simplify the Fees Schedule and make it easier to read. Underlying Symbol List A shall represent the following: OEX, XEO, SPX (including SPXw), SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES and binary options. The Exchange proposes to add a new Footnote (*i.e.,* Footnote 34), which defines the term ''Underlying Symbol List A'' as referring to the products listed above.

The Exchange next proposes to amend the Liquidity Provider Sliding Scale table. The Liquidity Provider Sliding Scale provides reduced transaction fees for a CBOE Market-Maker based on the Market-Maker executing a certain number of contracts per month. Currently, the Liquidity Provider Sliding Scale table provides that the volume thresholds are ''based on total national Market-Maker volume of any option classes with traded volume on CBOE during the calendar month.'' Additionally, the notes section of the Liquidity Provider Sliding Scale table provides that the reduced transaction fees are not applicable to ''mini-options, SPX, SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES, OEX or XEO.'' The Exchange proposes to change how the volume thresholds are calculated. Specifically, the Exchange proposes that the volume thresholds be based on the total national Market-Maker volume in all underlying symbols excluding those in Underlying Symbol List A and mini-options. The Exchange notes that currently, the calculation of the volume thresholds for the Liquidity Provider Sliding Scale is based on total national Market-Maker volume of any options classes with traded volume on CBOE during the calendar month and excludes volume in products that may not be listed on CBOE. As certain options classes may have volume traded on CBOE in some months, but not others, the Exchange believes it is more challenging for Trading Permit Holders (''TPHs'') to anticipate which classes will be part of the calculation each month and how that may or may not affect which tier and transaction fee will apply to them. The Exchange believes the proposed rule change eliminates this uncertainty by including all options classes except those in Underlying Symbol List A (and mini-options), which will reduce confusion and make it easier for TPHs to calculate and anticipate what volume threshold tier they will fall into each month and consequently which rates will be applicable to them. Additionally, the Exchange believes the proposed change will more accurately reflect which option classes are counted towards the qualifying volume thresholds. Lastly with respect to the Liquidity Provider Sliding Scale, the Exchange proposes to replace the list of products for which the Liquidity Provider Sliding Scale does not apply with the term ''Underlying Symbol List A.''

The Exchange also proposes to amend the CBOE Proprietary Products Sliding Scale table. Currently, the CBOE Proprietary Products Sliding Scale table provides that Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Clearing Trading Permit Holder Affiliates in OEX, XEO, SPX, SPXpm, VIX, VXST, and VOLATILITY INDEXES are reduced provided a Clearing Trading Permit Holder reaches certain volume thresholds in ''multiply-listed'' options classes on the Exchange in a month. The Exchange proposes to replace the list of proprietary products set forth in the notes section with the term ''Underlying Symbol List A.'' [3] The Exchange also proposes to replace the term ''multiply-listed'' with the following language: ''all underlying symbols excluding Underlying Symbol List A and mini-options.'' The Exchange notes that the proposed change more accurately describes which option classes are included in the qualification thresholds for the CBOE Proprietary Products Sliding Scale. Particularly, the Exchange notes that DJX, XSP, and XSPAM are included towards the qualification thresholds of the CBOE Proprietary Products Sliding Scale. Specifically, DJX and XSP are used to compete with multi-listed products that are also listed on CBOE (for example, the singly-listed XSP options compete with the multiply-listed SPY options, both of which approximate 1/10 of the S&P 500 Index, and the singly-listed DJX options compete with the multiply-listed DIA options, both of which are based on 1/100 of the value of the Dow Jones Industrial Average). Including the multiply-listed products for qualification towards the CBOE Proprietary Products Sliding Scale while excluding their singly-listed competitors could create a pricing advantage that might discourage trading in some of the singly-listed products that the Exchange expended resources to develop. As such, the Exchange includes these singly-listed products for qualification towards the CBOE Proprietary Products Sliding Scale along with their multiply-listed competitors. The Exchange believes the proposed change makes the CBOE Proprietary Sliding Scale table easier to read and more clearly describes the option classes included and excluded in the threshold volumes. The Exchange also proposes to make corresponding changes to Footnote 23, which Footnote relates to the CBOE Proprietary Sliding Scale.

The Exchange next proposes to amend the Volume Incentive Program (VIP) table. Under VIP, the Exchange credits each TPH the per contract amount set forth in the VIP table resulting from each public customer (''C'' origin code) order transmitted by that TPH which is executed electronically on the Exchange in all ''multiply-listed option classes,'' with certain exclusions, provided the TPH meets certain volume thresholds in ''multiply-listed options classes.'' The Exchange proposes to replace the term ''multiply-listed options classes'' with the phrase ''all underlying symbols excluding Underlying Symbol List A, RUT, DJX, XSP, XSPAM, credit default options, credit default basket options and mini-options.'' The Exchange notes that the VIP Program has always been limited to multiply-listed options classes (*i.e.,* options listed and traded on another national securities exchange) and mini-options. The Exchange believes the proposed change more clearly describes the option classes that are currently excluded from the VIP volume thresholds and per contract credit.

The Exchange proposes to similarly amend Footnote 12 (relating to Clearing Trading Permit Holder Proprietary Transaction Fees). Currently, Footnote 12 of the Fees Schedule provides that the Clearing Trading Permit Holder Proprietary Transaction Fee will be waived for Clearing Trading Permit Holders executing facilitation orders in ''multiply-listed'' FLEX Options classes. The Exchange proposes to change the reference to ''multiply-listed'' FLEX options to ''FLEX options in all underlying symbols excluding Underlying Symbol List A, credit default options and credit default basket options.'' The Exchange believes the proposed change more accurately describes which Flex options will and will not have the Clearing Trading Permit Holder Transaction Fee waived. For the reasons described above, the Exchange notes that Clearing Trading Permit Holder Proprietary Transaction Fees are waived for DJX, XSP, and

[3] Although included in the proposed Footnote 34 definition of ''Underlying Symbol List A,'' the Exchange notes that SROs are excluded from the CBOE Proprietary Products Sliding Scale. This exclusion is already, and will continue to be, referenced in the Notes section of the CBOE Proprietary Products Sliding Scale table.

XSPAM, as not waiving Clearing Trading Permit Holder Proprietary Transaction Fees for both these products and their multiply-listed competitors could create a pricing advantage that might discourage trading in some of the singly-listed products that the Exchange expended resources to develop.

Current Footnote 25, which governs rebates on Floor Broker Trading Permits, also references the term ''multiply-listed options classes.'' Specifically, Footnote 25 provides that any Floor Broker that executes a certain average of customer open-outcry contracts per day over the course of a calendar month in ''multiply-listed option classes,'' excluding subcabinet trades, will receive a rebate on that Floor Broker's Trading Permit Holder's Floor Broker Trading Permit Fees. The Exchange proposes to replace the term multiply-listed options classes'' with ''all underlying symbols excluding Underlying Symbol List A, DJX, XSP, XSPAM, credit default options, credit default basket options'' and also proposes to not count mini-options towards the Floor Broker Trading Permit rebate. The Exchange believes the proposed rule change provides consistency in the Fees Schedule and makes clear which option classes are meant to be included (and excluded) in the calculation of the volume threshold used to qualify for the rebate.

Finally, the Exchange proposes to remove the reference to ''single-listed options traded on CBOE'' in Footnotes 29 and 30 (relating to the Order Router Subsidy (''ORS'') and Complex Order Router Subsidy (''CORS'') Programs) and instead reference the options classes ''included in Underlying Symbol List A, DJX, XSP or XSPAM.'' The Exchange notes that each of the products listed in Underlying Symbol List A are considered ''single-listed'' products, as are DJX, XSP and XSPAM (*i.e.,* not listed and traded on another national securities exchange) and that no substantive changes are being made by this change. Rather, the proposed change is intended to provide further consistency and clarity in the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes it is reasonable and equitable to cease charging the Trade Processing Services fee for unmatched trade data. As noted above, unmatched trades will be charged if and when they become matched. As such, the Exchange does not believe it's necessary to assess the Trading Processing Fee to unmatched trades. Additionally, when the fee was originally introduced, the billing processes for assessing this fee were done manually and the fee helped offset the work involved in matched and unmatched data. As the billing process is now automated, the Exchange does not believe it is necessary to continue to bill unmatched trades. The Exchange believes it's reasonable to cease charging unmatched trade data the Trade Processing Services fee because it will merely result in Trading Permit Holders no longer being subject to this fee. The Exchange believes the proposed change is not unfairly discriminatory as it applies equally to all Trading Permit Holders, who no longer will be charged the fee for unmatched trade data. Additionally, all trades, once matched, will continue to be charged the fee. The Exchange believes providing in the Fees Schedule that for billing purposes, the Trade Processing Services fee will be rounded to the nearest $0.01 using standard rounding rules on a monthly basis, will alleviate confusion as to how the fee, which is under $0.01, will be assessed. The alleviation of potential confusion will 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 interest. The Exchange also believes that amending the Fees Schedule to accurately reflect the increase in quoting bandwidth allowance, alleviates confusion, thereby removing impediments to and perfecting the mechanism of a free open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes it is equitable, reasonable and not unfairly discriminatory to include DJX, XSP and XSPAM towards qualification of the CBOE Proprietary Products Sliding Scale and to waive Clearing Trading Permit Holder Proprietary Transaction Fees for DJX, XSP and XSPAM as these products are used to compete with multi-listed products that are also listed on CBOE (as explained above). The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to not count mini-option volume towards the Floor Broker Trading Permit rebate. The Exchange notes that it funds the costs associated with mini-options with revenues only from those participants who trade them. The Exchange also notes that the cost to process quotes, orders and trades in mini-options is the same as for standard options. Including mini-option volume towards the qualifying threshold for a Floor Broker Trading Permit rebate might necessitate raising costs for other market participants; therefore, the Exchange believes that the exclusion of mini-options is both reasonable and equitable. Further, as the measuring stick to determine whether a Trading Permit Holder meets the qualifying thresholds is the number of contracts traded, it would be difficult for the Exchange to count mini-option contracts, since they effectively function as 1/10th of a regular standard options contract.

Finally, the Exchange believes that eliminating potentially vague terms like ''multiply-listed options classes'' and ''single-listed option classes'' and replacing those terms with more explicit references to which option classes are or are not included or excluded in a program alleviates potential confusion. The Exchange believes the proposed rule changes also eliminates uncertainty as to which options classes will or will not be used in calculating certain volume, which will reduce confusion and make it easier for TPHs to calculate and anticipate what volume thresholds they will meet and consequently which

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78f(b)(4).

rates will be applicable to them. The Exchange believes that defining and then using the term ''Underlying Symbol List A'' to represent a commonly referred to set of proprietary products in lieu of listing out these products in various sections of the Fees Schedule simplifies the Fees Schedule and makes it easier to read. The alleviation of potential confusion will 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 interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply to all Trading Permit Holders. The Exchange believes that the proposal to cease charging the Trade Processing Services fee for unmatched trade data will not cause an unnecessary burden on intermarket competition because other exchanges already do not charge a similar fee. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19b-4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–CBOE–2014–092 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–*2014–092.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–*2014–092* and should be submitted on or before January 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29619 Filed 12–17–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b-4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73833; File No. SR–C2–2014–027]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules Regarding Trade Nullification and Price Adjustment

December 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2014, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to trade nullification and price adjustment. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

Rule 6.20. Trade Nullification and Price Adjustment Procedure

A trade on the Exchange may be nullified or adjusted if the parties to the trade agree to the nullification or adjustment. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that any trade that is nullified or adjusted pursuant to this Rule must

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

be authorized by the Exchange prior to the nullification or adjustment.

In addition, any trade that is adjusted pursuant to this Rule must be adjusted to a price that was permissible and in compliance with all Exchange and Securities and Exchange Commission Rules, as amended, at the time the original transaction was executed. The format and information required by the Exchange for this submission will be released by the Exchange via Regulatory Circular.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add Rule 6.20, ''Trade Nullification and Price Adjustment Procedure.'' [3] As proposed, Rule 6.20 will allow for transactions to be nullified if both parties to the transaction agree to the nullification and allow the price of executions to be adjusted if the price adjustment is agreed to by both parties to the transaction and authorized by the Exchange.[4]

Currently, Exchange Rules do not allow parties to nullify or adjust the price on an execution, unless there is an obvious error or catastrophic error pursuant to Rule 6.15. The Exchange is proposing to add Rule 6.20, ''Trade Nullification and Price Adjustment Procedure,'' which would: (a) Allow for any trades on the Exchange to be nullified if both parties to the trade agree to such nullification, and (b) allow for prices of executions to be adjusted if the price adjustment is agreed upon by both parties of the trade and authorized by the Exchange.

As stated above, the Exchange currently allows for trades to be nullified or prices adjusted when there is an obvious error or catastrophic error.[5] The Exchange is also proposing, however, to add a provision to allow TPHs to mutually agree to nullify a transaction or adjust a price of an execution. The Exchange believes allowing parties to adjust the price of a transaction is necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge transactions in other markets, including securities and futures, many TPHs, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment will result in the least amount of disruption to the overall market.

As proposed, Rule 6.20 expressly states that trades may be subject to nullification or price adjustment only if such trades are authorized by the Exchange. The Exchange notes that proposed Rule 6.20 is based on Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.19 [6] and that the process that C2 TPHs follow to nullify or adjust the price of a transaction pursuant to proposed rule 6.20 will be similar to how CBOE TPHs nullify or adjust the price of a transaction pursuant to CBOE Rule 6.19. Additionally, as with CBOE Rule 6.19, proposed C2 Rule 6.20 requires Exchange authorization prior to the effectuation of such nullification or price adjustment. As part of the authorization process, in the case of a mutual nullification or mutual price adjustment, the Exchange will only authorize if the Exchange received verification from both parties to the trade that a mutual agreement has been made. In addition, prior to an authorization for a mutual price adjustment, the Exchange will ensure the agreed upon price would have been permissible and in compliance with all Exchange and Securities and Exchange Commission Rules, as amended, at the time the original transaction was executed.[7] Finally, the proposed rule will state that the format and information required by the Exchange for this submission will be released by the Exchange via Regulatory Circular. As such, prior to Rule 6.20 becoming operative, the Exchange will provide TPHs with specific requirements via an Exchange Regulatory Circular. The circular will, among other things, state specific timeframes required for requests and the format in which the requests will be accepted by the Exchange.

To conclude, the Exchange believes that the proposed changes are in furtherance of the Act because the proposed Rule 6.20 will allow TPHs to agree to nullify transactions or adjust prices of transactions to maintain a fair and orderly market. As stated above, the Exchange intends to release a Regulatory Circular to announce the implementation of the Rule and other specifics surrounding the procedures of the implementation. In addition, prior to implementation, the Exchange will ensure it has proper policies and procedures in place to correctly administer the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

[3] The Exchange notes that this proposal is only intended to be effective until the joint efforts by the exchanges to create uniform trade nullification and adjustment rules are approved and in effect. Once the uniform rule has been approved and is effective, the Exchange will amend its rules appropriately.

[4] The Exchange notes that, as proposed, Rule 6.20 will only apply to trades that were executed on the Exchange and, as such, any orders that were either fully or partially routed to, or executed, on another Exchange will not be subject to the proposed Rule 6.20.

[5] *See* Exchange Rule 6.15.

[6] Securities Exchange Act Release No. 34–72970 (September 3, 2014), 79 FR 53498 (September 9, 2014) (SR–CBOE–2014–066).

[7] For example, the Exchange would ensure that the mutually agreed upon price would not have traded through resting interest at the time of the initial execution.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

More specifically, the Exchange believes that the proposed changes are consistent with the Act as they are designed to promote just and equitable principles of trade and protect investors and the public interest. Because options trades are used to hedge transactions in other markets, including securities and futures, many market participants would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment will result in the least amount of disruption to the overall market. In addition, the Exchange does not believe that the proposed changes are unfairly discriminatory because they will be applied to all Trading Permit Holders equally. Finally, as noted above, proposed Rule 6.20 is based on CBOE Rule 6.19.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed rule change will foster competition as it will allow for less overall disruption to the market and encourage participation on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2014–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2014–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2014–027, and should be submitted on or before January 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29620 Filed 12–17–14; 8:45 am]

BILLING CODE 8011–01–P

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73829; File No. SR–NYSEMKT–2014–100]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 900.3NY(k) To Disallow Market Orders from Being Eligible for Designation as an Immediate-or-Cancel Order

December 12, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 2, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 900.3NY(k) (Orders Defined) to disallow Market Orders from being

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

eligible for designation as an Immediate-or-Cancel order (''IOC Order''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend 900.3NY(k) to disallow Market Orders from being eligible for designation as an IOC Order.

Per Rule 900.3NY(k), an IOC Order is defined as ''A Market or Limit Order that is to be executed in whole or in part on the Exchange as soon as such order is received, and the portion not so executed is to be treated as canceled. Per 900.3NY(a), ''[a] Market Order is an order to buy or sell a stated number of option contracts and is to be executed at the best price obtainable when the order reaches the Exchange.'' Market participants entering a Market Order are instructing the Exchange to execute their order in its entirety at the best price, immediately upon arrival at the Exchange, subject to Trade Collar Protection set forth in Rule 967NY(a).

The Exchange believes that attaching the IOC time-in-force condition to a Market Order is unnecessary because Market Orders, by definition, are intended to be executed at the best price available at the Exchange. In essence, except when subject to Trade Collar Protection, a Market Order already operates similarly to an order with an IOC time-in-force condition. To streamline the offerings of Exchange order types, the Exchange therefore proposes to eliminate the ability to designate a Market Orders [sic] as an IOC Order. The Exchange believes the proposed change would assist with the maintenance of fair and orderly markets because it would reduce the complexity of order types available to market participants and would help clarify the nature of order types available for trading on the Exchange.

Implementation

The Exchange will announce the implementation date of this change through a Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes the proposed change would assist with the maintenance of fair and orderly markets because it would reduce the complexity of order types available to market participants, thereby adding transparency and clarity to the Exchange's rules, and would help clarify the nature of order types available for trading on the Exchange. The Exchange further believes that deleting the IOC time-in-force modifier for Market Orders would also remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the order types available for trading on the Exchange. Moreover, the Exchange believes that the elimination of the IOC time-in-force modifier for Market Orders would simplify order processing and reduce the burden on system capacity, which the Exchange believes is consistent with promoting just and equitable principles of trade as well as protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change would relieve a burden on competition by eliminating an order type and streamlining the Exchange's rule. In doing so, the proposed rule change would also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[9] 15 U.S.C. 78s(b)(2)(B).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–100. 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 NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–100 and should be submitted on or before January 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29617 Filed 12–17–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73822; File No. SR–BOX–2014–29]

Self-Regulatory Organizations; BOX Options Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend, Through June 30, 2015, the Pilot Program That Permits Certain Classes To Be Quoted in Penny Increments (''Penny Pilot Program'')

December 11, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 10, 2014, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7260 to extend, through June 30, 2015, the pilot program that permits certain classes to be quoted in penny increments (''Penny Pilot Program''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the effective time period of the Penny Pilot Program that is currently scheduled to expire on December 31, 2014, for an additional six months, through June 30, 2015.[3] The Penny Pilot Program permits certain classes to be quoted in penny increments. The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQs, SPY and IWM, will continue to be $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The QQQs, SPY and IWM, will continue to be quoted in $0.01 increments for all options series.

The Exchange may replace any Pilot Program classes that have been delisted on the second trading day following January 1, 2015. The replacement classes will be selected based on trading activity for the six month period beginning June 1, 2014, and ending November 30, 2014. The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying securities. The Exchange will distribute a Regulatory Circular notifying Participants which replacement classes shall be included in the Penny Pilot Program.

BOX is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the

[3] The Penny Pilot Program has been in effect on the Exchange since its inception in May 2012. See Securities Exchange Act Release Nos. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No.10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission), 67328 (June 29, 2012), 77 FR 40123 (July 6, 2012) (SR–BOX–2012–007), 68425 (December 13, 2012), 77 FR 75234 (December 19, 2013) (SR–BOX–2012–021), 69789 (June 18, 2013), 78 FR 37854 (June 24, 2013) (SR–BOX–2013–31), 71056 (December 12, 2013), 78 FR 76691 (December 18, 2013) (SR–BOX–2013–56), and 72348 (June 9, 2014), 79 FR 33976 (June 13, 2014) (SR–BOX–2014–17). The extension of the effective date and the revision of the dates to replace issues that have been delisted are the only changes to the Penny Pilot Program being proposed at this time.

[4] 15 U.S.C. 78f(b).

Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2015 and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following January 1, 2015, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange. Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and would allow replacement of Penny Pilot classes that have been delisted. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2014–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2014–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–

2014–29 and should be submitted on or before January 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29616 Filed 12–17–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73830; File No. SR–NYSEArca–2014–138]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.62(k) To Disallow Market Orders From Being Eligible for Designation as An Immediate-or-Cancel Order

December 12, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 2, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.62(k) (Certain Types of Orders Defined) to disallow Market Orders from being eligible for designation as an Immediate-or-Cancel order (''IOC Order''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.62(k) to disallow Market Orders from being eligible for designation as an IOC Order.

Per Rule 6.62(k), an IOC Order is defined as ''A Market or Limit Order that is to be executed in whole or in part on the Exchange as soon as such order is received, and the portion not so executed is to be treated as canceled.'' Per Rule 6.62(a), ''[a] Market Order is an order to buy or sell a stated number of option contracts and is to be executed at the best price obtainable when the order reaches the Exchange.'' Market participants entering a Market Order are instructing the Exchange to execute their order in its entirety at the best price, immediately upon arrival at the Exchange, subject to Trade Collar Protection set forth in Rule 6.60(a).

The Exchange believes that attaching the IOC time-in-force condition to a Market Order is unnecessary because Market Orders, by definition, are intended to be executed at the best price available at the Exchange. In essence, except when subject to Trade Collar Protection, a Market Order already operates similarly to an order with an IOC time-in-force condition. To streamline the offerings of Exchange order types, the Exchange therefore proposes to eliminate the ability to designate a Market Orders [sic] as an IOC Order. The Exchange believes the proposed change would assist with the maintenance of fair and orderly markets because it would reduce the complexity of order types available to market participants and would help clarify the nature of order types available for trading on the Exchange.

Implementation

The Exchange will announce the implementation date of this change through a Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes the proposed change would assist with the maintenance of fair and orderly markets because it would reduce the complexity of order types available to market participants, thereby adding transparency and clarity to the Exchange's rules, and would help clarify the nature of order types available for trading on the Exchange. The Exchange further believes that deleting the IOC time-in-force modifier for Market Orders would also remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the order types available for trading on the Exchange. Moreover, the Exchange believes that the elimination of the IOC time-in-force modifier for Market Orders would simplify order processing and reduce the burden on system capacity, which the Exchange believes is consistent with promoting just and equitable principles of trade as well as protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change would relieve a burden on competition by eliminating an order type and streamlining the Exchange's rule. In doing so, the proposed rule change would also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2014–138 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–138. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–138, and should be submitted on or before January 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29618 Filed 12–17–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Geo Finance Corporation; Order of Suspension of Trading

December 16, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geo Finance Corporation (''Geo Finance'') because of concerns regarding the accuracy and adequacy of information in the marketplace and potentially manipulative activity related to Geo Finance common stock. Geo Finance is a Florida corporation with its principal place of business located in Toronto, Ontario, Canada. Its stock is quoted on OTC Link, (previously ''Pink Sheets'') operated by OTC Markets Group Inc., under the ticker symbol: GEFI.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on December 16, 2014 through 11:59 p.m. EST, on December 30, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–29729 Filed 12–16–14; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8978]

Updated Call for Reviewers of the World Ocean Assessment

AGENCY: U.S. Department of State.

ACTION: Notice of a Certification.

The U.S. Department of State, in coordination with the National Ocean Council, requests expert review of the draft World Ocean Assessment.

The United Nations (UN) has embarked on a regular process for global reporting on, and assessment of, the state of the marine environment, including socioeconomic aspects, the product of which is called the World Ocean Assessment (WOA). The projected, revised completion date for the first WOA is September 2015. Subsequent WOAs are expected to be generated every five years to document trends in the state of the marine environment. The WOA includes more than fifty subjects grouped within four main themes: Marine environment and understanding of the ocean's role in the global integrated Earth system; food security and food safety; human activities that influence the ocean or are influenced by the ocean; and marine biological diversity. A scientific and technical summary will integrate content to show linkages through interdisciplinary subjects such as human impacts, ecosystem services, and habitats. More information regarding the evolution and methodology of the WOA

can be found at *www.worldoceanassessment.org.*

This fall, UN Member States will have an opportunity to review the draft WOA, which is expected to comprise 50 chapters (approximately 15 pages each) and a 70-page technical summary; the outline (*http://www.un.org/Depts/los/global_reporting/Outline_eng.pdf*) illustrates the very wide range of expertise needed for such review. The Department of State invites experts in relevant fields of expertise to participate in the U.S. Government review of the draft WOA. Registration at *www.review.globalchange.gov,* a Web-based review and comment system, is currently open for experts planning to review the draft WOA. Registered experts will have access to the draft WOA on 20 December 2014 and will have until 5:00 p.m. (EST) 6 February 2015 to submit their review comments using the Web-based review and comment system. Detailed instructions for review and submission of comments are available at *www.review.globalchange.gov.*

A Review Coordination Team comprising Federal scientists and program managers will develop a consolidated U.S. Government review submission. Only comments received via the Web-based review and comment system within the comment period will be considered by the Review Coordination Team for inclusion in the U.S. Government review submission.

This certification will be published in the **Federal Register**.

Dated: December 12, 2014.

Evan T. Bloom,

Director, Office of Ocean and Polar Affairs, U.S. Department of State.

[FR Doc. 2014–29676 Filed 12–17–14; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–135]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 7, 2015.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0882 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Sandra K. Long, 800 Independence Ave. SW., Washington, DC 20591, (202)–267–4714, *Sandra.long@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 12, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0882

Petitioner: Zee.Aero Inc.

Section of 14 CFR Affected

14 CFR §91.151(a)(1)

Description of Relief Sought

The petitioner seeks relief from 14 CFR 91.151(a)(1) to allow its manned aircraft using electric propulsion to fly in uncontrolled airspace with a reduced ''fuel'' reserve during its FAA-approved research and development flight test program.

[FR Doc. 2014–29614 Filed 12–17–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–139]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 7, 2015.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0134 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Everette Rochon, Acting Manager, AFS–820, Commercial Operations Branch, General Aviation and Commercial Division, 55 M Street SE., Washington, DC 20003; or Sandra K. Long, ARM–200 Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave, Washington, DC 20591, email *Sandra.long@faa.gov,* phone (202) 267–4714.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 12, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0134
Petitioner: Al's Aerial Spraying, LLC

Section of 14 CFR Affected

14 CFR 137.53; 137.51(b)(4)(i)

Description of Relief Sought

The petitioner seeks relief from 14 CFR §§137.53 and 137.51(b)(4)(i) to use a single-engine turbopropeller-powered Air Tractor aircraft to make turnarounds over congested areas in a loaded configuration.

[FR Doc. 2014–29613 Filed 12–17–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline To Amend Slot Records for LaGuardia Airport

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of January 5, 2015, for requests to amend slot records (adjust slot times and arrival/departure designations) at New York LaGuardia Airport (LGA).

DATES: Adjustment requests must be submitted no later than January 5, 2015.

ADDRESSES: Adjustment requests may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Ave. SW., Washington, DC 20591; by facsimile to: 202–267–7277; or by email to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: 202–267–7143; email: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION: Scheduled operations at LGA currently are limited by FAA Order until a final Slot Management and Transparency Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89) becomes effective but not later than October 29, 2016.[1] The LGA Order permits the leasing or trading of slots through the expiration date of the Order, but this mechanism limits a carrier's ability to permanently adjust its slot base through trades with another carrier, as is common at Ronald Reagan Washington National Airport (DCA). Additionally, the Order permanently allocates slots, unlike the EWR and JFK Orders that allocate slots and permit slot retimings on a seasonal basis, subject to availability of slots through a transparent process generally following the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG).[2]

In July 2014, the FAA announced a submission deadline for requests to amend slot records (adjust slot times and arrival/departure designations) and evaluated those requests in anticipation of the 2014–15 winter IATA scheduling season.[3] The FAA received generally favorable feedback from carriers and interested parties on the adjustment process. Historically, the FAA had evaluated and confirmed these adjustment requests, consistent with the LGA Order and prior FAA practice, on a first-come, first-served basis after evaluating whether they have an operational benefit or a neutral effect on operations. Since 2007, adjustments have improved LGA operational performance. Although the FAA had not necessarily intended to request and review slot adjustments on a regular basis, it has determined that using a seasonal review process addresses operational necessities in a fair and transparent manner. Therefore, in the future the FAA will establish submission deadlines by **Federal Register** notice in early August and early December because the FAA has noticed that the largest number of requests occur as carriers are finalizing their planned schedules. The FAA will continue to review all adjustment requests submitted outside of this semi-annual process in the order they are received.

To evaluate LGA slot adjustments for the upcoming 2015 summer IATA scheduling season in a fair and transparent manner, the FAA is establishing a deadline of January 5, 2015, for carriers to request retiming and changes to the arrival/departure designation of currently-held slots. Carriers should provide slot information in sufficient detail including, at a minimum, the operating carrier, slot number, scheduled time of arrival or departure, frequency, arrival/departure designation, and effective dates. Consistent with past practice, the FAA will evaluate requests in light of the overall operational impact at LGA and whether the requests improve or have a neutral effect on operational performance. The FAA will consider both short-term adjustments and adjustments through the expiration of the LGA Order. In addition, if the FAA receives conflicting requests for retiming, the FAA will give priority to new entrants and limited incumbents, consistent with the LGA Order and FAA practice. The terms of the LGA Order prevent the FAA from allocating new slots in hours at or above the slot limit.

The FAA will evaluate requests received by January 5, 2015, and intends to respond to the requests no later than January 12, 2015. The FAA cannot guarantee that all requests to adjust slot holdings will be confirmed. Requests received after January 5, 2015, will be evaluated after timely requests in the order they are received. As permitted under paragraph A.5 of the LGA Order, carriers are encouraged to engage in slot trades, when possible, to achieve desired timings.

[1] Operating Limitations at New York LaGuardia Airport, 71 FR 77854 (Dec. 27, 2006) as amended by 79 FR 17222 (Mar. 27, 2014).

[2] *See* 79 FR 16857 (Mar. 26, 2014) (EWR Order); 79 FR 16854 (Mar. 26, 2014) (JFK Order).

[3] 79 FR 44088 (Jul. 29, 2014).

Issued in Washington, DC, on December 12, 2014.

Mark W. Bury,

Assistant Chief Counsel for International Law, Legislation, and Regulations.

[FR Doc. 2014–29710 Filed 12–17–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2013–0042]

Major Project Financial Plan Guidance

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final Notice.

SUMMARY: This final notice announces the availability of Major Project Financial Plan Guidance. February 2, 2015

DATES: *Effective Date:* The final notice is effective February 2, 2015.

FOR FURTHER INFORMATION CONTACT: Jim Sinnette, Office of Innovative Program Delivery, 202–366–1561, *james.sinnette@dot.gov* or, Janet Myers, Office of the Chief Counsel, 202–366–2019, *janet.myers@dot.gov,* Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days this year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at: *http://www.archives.gov/federal-register* and the Government Printing Office's Web site at: *http://www.gpo.gov/fdsys.*

Background

On September 6, 2013, FHWA published a notice and request for comments regarding the FHWA's proposal to revise the Major Project Financial Plan Guidance. Major projects are defined in section 106(h) of title 23, United States Code (23 U.S.C. 106(h)), as projects receiving Federal financial assistance with an estimated total cost of $500 million or other projects as may be identified by the Secretary. Major projects are typically large, complex projects designed to address major highway needs and require the investment of significant financial resources. The preparation of the annual financial plan, as required by 23 U.S.C. 106(h)(3), ensures that the necessary financial resources are identified, available, and monitored throughout the life of the project.

The proposed Major Project Financial Plan Guidance replaces the existing January 2007 Major Project Financial Plan Guidance. Title 23 U.S.C. 106, as amended by section 1503 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), allows financial plans to include a phasing plan when there are insufficient financial resources to complete the entire project. In addition, 23 U.S.C. 106 now requires recipients of Federal financial assistance to assess the appropriateness of a public-private partnership (P3) to deliver the project. In addition to these MAP–21 changes, the proposed Major Project Financial Plan Guidance also incorporates a recommendation included in a 2009 Government Accountability Office report titled ''Federal-Aid Highway: FHWA Has Improved Its Risk Management Approach, but Needs to Improve Its Oversight of Project Costs'' (GA–090–751). The report recommended that financial plans include the cost of financing the project.

Discussion of Comments

I. Summary

All comments received in response to the notice and request for comments have been considered in adopting this final notice. Comments were received from the American Association of State Highway and Transportation Officials (AASHTO), Professional Engineers in California Government (PECG), Ernst & Young Infrastructure Advisors, LLC (E&Y), and representatives of seven State DOTs. The following discussion identifies and summarizes the major comments submitted by the commenters in response to the September 6, 2013, notice and the FHWA's responses.

II. General Comments—Approval of Financial Plans

Comment: The AASHTO believes that the FHWA approval of financial plans for projects with an estimated cost of $500 million or more is not supported by the language of the statute (23 U.S.C. 106(h)(1)) and recommends that the guidance be modified to require only that the project sponsor submit the financial plan to the DOT. The AASHTO notes that the DOT would still approve financial plans for projects receiving Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance. The Nevada Department of Transportation (NDOT) notes that the statute only requires submission of financial plans and does not mention approval or concurrence.

FHWA Response: The submission of major project financial plans is required by statute (23 U.S.C. 106(h)(1)). The FHWA's review and approval of major project financial plans is to ensure that the plans contain the information required by 23 U.S.C. 106(h)(3), and is necessary for FHWA to carry out its stewardship and oversight responsibilities for major projects. No changes have been made to the guidance.

Comment: AASHTO recommends adding a statement clarifying that the guidance does not impose any binding legal requirements.

FHWA Response: FHWA acknowledges that this guidance does not impose any binding legal requirements. The purpose of this guidance is to clarify the FHWA review and approval of financial plans. As noted in the guidance, it applies only to the development and updates of major project financial plan. It does not apply to the application of any other Federal requirements. No changes have been made to the guidance.

Comment: The NDOT recommends that the FHWA Division Office determine the acceptability of the financial plans and respond to the sponsor within 30 days.

FHWA Response: The guidance states that FHWA will determine a financial plan's acceptability within 60 days after receipt by the Office of Innovative Program Delivery Project Delivery Team. Due to the importance and complexity associated with financial plans and based on previous experience, FHWA believes that this timeframe is appropriate. No changes have been made to the guidance.

III. General—Project Exemptions

Comment: The Washington State Department of Transportation (WSDOT) and the Arkansas State Highway and Transportation Department (AHTD) recommend that financial plans underway prior to MAP–21 be exempted from this updated guidance.

FHWA Response: Consistent with this comment the final notice states that this guidance will be in effect for all financial plans submitted to FHWA 45 days after date of publication in the **Federal Register**. This identifies specific criteria that can be verified by FHWA and provide a timeline that will allow financial plans submitted prior to the

effective date in the **Federal Register** to be reviewed by FHWA using the previous guidance. This will help ensure a timely and consistent implementation of the updated guidance. No changes have been made to the guidance.

IV. General—Other Projects ($100 Million to $500 Million)

Comment: The Alaska Department of Transportation and Public Facilities (AKDOT & PF), the Minnesota Department of Transportation (MnDOT), and the PECG recommend that FHWA make a distinction between the guidance for projects with an estimated cost of $500 million or more and projects with an estimated cost of $100 million or more that are not designated major projects. The AASHTO recommends that the guidance clarify that financial plans for projects with an estimated cost of $100 million or more that are not designated major projects will be less detailed.

FHWA Response: The statute (23 U.S.C. 106(i)) uses the same term, ''annual financial plan,'' for both major projects and other projects (projects with an estimated cost of $100 million or more that are not designated major projects). The only distinction in the statute is that financial plans for other projects only need to be made available upon request, which is reflected in the guidance. Thus, financial plans for projects $100 million to $500 million must address the same information as financial plans for major projects. No changes have been made to the guidance.

Comment: AASHTO recommends that for projects with an estimated cost of $100 million or more that are not designated major projects, project sponsors should have the option of submitting a single financial plan that covers multiple projects in a single geographical area.

FHWA Response: The guidance has been modified to allow project sponsors to submit a single financial plan that covers multiple projects with prior concurrence of the FHWA Division Office.

Comment: AASHTO recommends that a project sponsor have the option of preparing a phased financial plan for a project with an estimated cost of $100 to $500 million.

FHWA Response: As stated within, this guidance applies to section 106(i) and allows the option to prepare a phased financial plan. (23 U.S.C. 106(h)(1)(B)) No changes have been made to the guidance.

Comment: AASHTO recommends that if a phased financial plan is prepared for a project with an estimated cost of $100 million to $500 million, that plan should be deemed to satisfy fiscal constraint requirements for that project.

FHWA Response: The guidance now states that if a phasing plan is included in an approved financial plan and fiscal constraint requirements are met for the funded phase, then pursuant to 23 U.S.C. 106(h)(3)(c) the overall project is deemed to meet fiscal constraint requirements under 23 U.S.C. 134 and 135.

Comment: The MnDOT recommends that the identification of projects with an estimated cost of less than $500 million, where FHWA requires a submission of financial plans, be done at the time of the National Environmental Policy Act (NEPA) decision and include a written explanation from FHWA.

FHWA Response: The preparation of financial plans for other projects (projects with an estimated cost of $100 million or more that are not designated major projects) is required by statute (23 U.S.C. 106(i)). They are to be made available for review upon request by FHWA. The statue does not require specific notification or rationale for requesting the submission of financial plans for other projects. The FHWA Division Offices will work with project sponsors to establish expectations for financial plans for other projects as part of the Division Office's overall stewardship and oversight approach. No changes have been made to the guidance.

Comment: The MnDOT recommends a standardized process be implemented to ensure that the requirement to submit annual updates based on reasonable assumptions ''as determined by the Secretary'' is applied consistently by FHWA.

FHWA Response: This updated guidance along with the technical assistance provided by FHWA staff to project sponsors is intended to promote consistency in the FHWA review of financial plans. No changes have been made to the guidance.

V. General—Project Applicability

Comment: The AHTD recommends that financial plans should only be completed if the Federal funds used for the project are $80 million or more.

FHWA Response: The threshold for financial plans is contained in statute (23 U.S.C. 106(h)(1)) and does not specify a minimum amount of Federal financial assistance. No changes have been made to the guidance.

Comment: The PECG commented that the guidance, especially with respect to the P3 assessment, should not apply to all TIFIA assisted projects.

FHWA Response: The requirement for the P3 assessment is contained in the statute (23 U.S.C. 106(h)(3)(D)) and therefore, must be applied to TIFIA assisted projects that require compliance with major project financial plan requirements. No changes have been made to the guidance.

VI. General—Guidance References

Comment: The NDOT recommends including, by reference, accompanying documents that must be read at the same time to understand and put into context changes in the guidance. The NDOT specifically mentions the Operational Independence and Non-Concurrent Construction guidelines, the FHWA Major Project Program Cost Estimating Guidance, and any risk management reference.

FHWA Response: The reference to the Major Project Program Cost Estimating Guidance is included in the Major Project Financial Plan Guidance. This revised guidance replaces the previously separate Operational Independence and Non-Concurrent Construction guidelines and there is no FHWA risk management reference included in this guidance. No changes have been made to the guidance.

VII. General—Fiscal Constraint Requirements (23 U.S.C. 134 and 135)

Comment: AASHTO recommends that project sponsors be allowed to submit an initial financial plan prior to the completion of NEPA to be used as the basis for meeting fiscal constraint requirements.

FHWA Response: As noted in the guidance, the FHWA will not approve a major project financial plan until the selected alternative for the project has been identified in the NEPA decision document for the project. An annual financial plan is a comprehensive document that reflects the project's scope, schedule, cost estimate, and funding structure to provide reasonable assurance that there will be sufficient funding available to implement and complete the entire project, or a fundable phase of the project, as planned. This documentation cannot be prepared until a project has been identified through the NEPA process. No changes have been made to the guidance.

Comment: AASHTO recommends that the guidance should state that financial plans prepared during the NEPA process will have a lower level of detail than a financial plan that is prepared at a later stage of project development.

FHWA Response: This guidance only applies to financial plans needed to meet the major project requirements. Financial plan approval is required from FHWA prior to the first Federal construction authorization. The FHWA will not approve a major project financial plan until the selected alternative for the project has been identified in the NEPA decision document for the project. No changes have been made to the guidance.

VIII. General—Risk Assessments

Comment: The NDOT commented that the guidance does not separate the Planning Stage Risk Assessment Process with its corresponding level of effort versus the Major Project Risk Assessment Process. The NDOT recommends that under the phased plan discussion, additional guidance should be provided to explain the risk assessment expectations for projects within the Statewide Transportation Improvement Program (STIP), for projects 2 to 3 years outside the STIP, and projects within the 20-year Long Range Plan. The NDOT also recommends that the guidance describe the specific level of effort for preparing and maintaining a risk register and include risk management expectations for the projects and risk strategies to deliver projects early if funding is identified after the financial plan has been approved.

FHWA Response: This guidance only applies to financial plans needed to meet the major project requirements. It is not intended to prescribe to project sponsors the methods and efforts required to conduct project risk assessments and develop and implement risk strategies. This comment is outside the established scope of the guidance. No changes have been made to the guidance.

IX. Project Funding

Comment: For a phased financial plan, the NDOT recommends the guidance clarify that the identified funded phase is the only portion of the project that is to be fiscally constrained.

FHWA Response: The guidance does note in Section 4 under *Contents of the Financial Plan* that detailed funding information only needs to be included for each funded phase. No changes have been made to the guidance.

X. Operationally Independence and Non-Concurrent Construction (OINCC) Projects

Comment: The AHTD and the Wisconsin Department of Transportation (WisDOT) recommend that the guidance clarify the definition of OINCC. Similarly, AASHTO recommends that the guidance clarify that a finding of OINCC is not required for each phase of the project that is covered in a phased financial plan. The AASHTO and the WisDOT further recommend that the term ''phase'' should not be used to refer to a project stage that is determined to be OINCC. Additionally, AASHTO recommends that the guidance clarify that a finding of OINCC is required only if the project defined in the NEPA document will be divided into small projects, each of which will be covered in a separate financial plan.

FHWA Response: FHWA has revised the definition of OINCC in the guidance to clarify discussion on phased financial plans. Specifically, the term ''phase'' will not be used in the definition. The guidance now specifies that each phase of a phased financial plan does not have to meet the OINCC criteria and that such a finding is needed only when the project defined in the NEPA document will be divided into smaller portions for the purposes of applying major project requirements.

Comment: AASHTO recommends that the application of the OINCC criteria be flexible and pragmatic. Specifically, AASHTO recommends that the 5-year and 20-year periods be used as general guides, not rigid requirements. The AASHTO also recommends that the guidance include examples to describe the types of projects that would (and would not) be considered OINCC.

FHWA Response: The FHWA will continue to be flexible and pragmatic regarding the entire guidance. Due to the varied characteristics of major projects, examples would not be able to cover the many potential scenarios and therefore will not be included in the guidance. The FHWA staff will be available to discuss the OINCC criteria with project sponsors. No changes have been made to the guidance.

Comment: The Colorado Department of Transportation (CDOT) commented that the 20-year threshold is excessive because of changing priorities and the unpredictability of OINCC projects within that period. The CDOT further recommends that subsequent OINCC projects could be determined with the remaining criterion of a 5-year threshold between the completion of one portion and the beginning of the next portion. Finally, CDOT recommends that if funding is identified for future OINCC projects, they may be added to a project's financial plan. Similarly, the AKDOT & PF commented that the 20-year threshold criterion should be removed and that a State DOT should be able to adapt to changes in available funding to accelerate the project schedule.

FHWA Response: The OINCC section has been revised to clarify the application of the criteria and identify when financial plans are required for OINCC projects. The 20-year threshold ensures that the OINCC guidance is used for projects that are scheduled to be delivered over such an extended period of time that it is not realistic to expect that a project sponsor's financial plan can provide enough detail for the entire project. The 5-year threshold is the time between the OINCC project and the next portion of the overall project. The threshold is used to determine if non-concurrent construction exists between separate portions of the overall project. Requests for revisions, as a result of changes in funding availability to an OINCC project determination, should be submitted to the FHWA Division Office.

Comment: The NDOT recommends that the three criteria for OINCC should be guidelines, not specific requirements.

FHWA Response: The criteria are considered guidelines and the application of each criterion will be considered by FHWA on a project specific basis. No changes have been made to the guidance.

Comment: The NDOT recommends that the guidance clarify when a financial plan for OINCC projects is required and the level of detail needed to conduct a risk assessment.

FHWA Response: The guidance has been revised to clarify when financial plans for OINCC projects are required. This guidance is for the preparation of major project financial plans. It is not intended to prescribe to project sponsors the methods and efforts required to conduct project risk assessments.

XI. TIFIA Projects

Comment: The CDOT recommends that when TIFIA assistance is provided to a project, an approval from the TIFIA Office for both the initial major project financial plan and annual updates would simplify and streamline the approval process for the project sponsors.

FHWA Response: When TIFIA assistance is provided to a project, the initial financial plan and annual updates are reviewed by both the Project Delivery Team and the TIFIA Office. A consolidated concurrence from both the TIFIA Office and Project Delivery Team is prepared. The Division Office will then provide the approval to the project sponsor. This review process incorporates a multi-disciplined approach as each office has a different

function. No changes have been made to the guidance.

Comment: AASHTO recommends that the guidance clarify that it is permissible, but not required, to submit a single document that serves as both the major project financial plan and the TIFIA financial plan.

FHWA Response: The guidance does not require the submission of a single document, however, it may be more efficient to submit one financial plan since it is a TIFIA requirement that the TIFIA financial plan be prepared in accordance with major project financial plan guidance. The guidance has been clarified.

Comment: AASHTO states that the entity submitting the major project financial plan may be different than the entity submitting the TIFIA financial plan.

FHWA Response: FHWA recognizes in the guidance that there may be multiple documents submitted by multiple project sponsors needed to meet the requirement of a major project financial plan and the requirement of a TIFIA financial plan. However, the documents would supplement each other and together satisfy both requirements. No changes have been made to the guidance.

Comment: AASHTO states that the requirement to submit annual updates under a TIFIA loan agreement extends for the duration specified in the agreement while the requirement to submit annual updates for major projects extends only through the completion of construction.

FHWA Response: The guidance notes that the submission of annual updates of projects with TIFIA assistance may extend beyond substantial completion of the project. The TIFIA office requires its financial plans to be prepared in accordance with the major project financial plan guidance after the completion of construction. The guidance also notes that after the major project requirements have been met, financial plans with TIFIA assistance may be required throughout the life of the loan. No changes have been made to the guidance.

Comment: AASHTO recommends clarification that the guidance can be superseded by provisions in the TIFIA loan agreement or other project agreements with FHWA and/or DOT.

FHWA Response: All TIFIA loan agreements, regardless of total project cost, require the borrower to submit annual financial plans in accordance with this guidance. The methods for developing and updating major project financial plans presented in the guidance are not legally binding requirements, and may be modified, as appropriate by TIFIA loan agreements or other legally binding agreements, to meet both the TIFIA and other legal requirements. No changes have been made to the guidance.

XII. Multiple Project Sponsors

Comment: The NDOT asks if a project sponsor, whose only role was to contribute certain funds to the project, has to provide a certification for the entire financial plan or just for their contribution.

FHWA Response: The guidance now includes a definition of a project sponsor. A project sponsor is defined as an entity that provides funds for the project and administers any Construction or Construction Engineering/Inspection activities for the project. If an entity was only providing funds and not administering construction related activities, then a financial plan letter of certification from that entity is not required.

Comment: The NDOT recommends defining the term ''otherwise'' in the sentence: ''If the State DOT granting the concession has also provided funds (whether Federal-aid or otherwise), then both the public and private entities would be considered Project Sponsors.'' The NDOT also recommends adding that P3s should submit a financial plan.

FHWA Response: The phrase ''Federal-aid or otherwise'' has been replaced with ''any type of funds.'' The guidance states that single or multiple financial plans can be submitted at the discretion of the project sponsors. This may include financial plans from P3s.

Comment: AASHTO recommends that the guidance clarify if it is permissible for each project sponsor to submit a separate financial plan when there are multiple project sponsors.

FHWA Response: The guidance allows for each project sponsor to submit separate financial plans for its portion of the project. No changes have been made to the guidance.

XIII. Financial Plan Submission Process

Comment: E&Y and the NDOT recommend that the guidance clarify that projects other than design/bid/build projects will not be subject to stricter standards, but FHWA will allow flexibility in the timing of the initial financial plan submissions. The E&Y further recommends that the guidance include examples of possible timeframes and suggest ways for the FHWA Division Offices to coordinate with project sponsors regarding financial plan submissions.

FHWA Response: This guidance will be applied to all projects regardless of procurement method. For all projects, the initial financial plan should be approved prior to the first authorization of Federal funds for construction. Since major projects procurement methods are often unique, there would be too many timeframe examples to include in the guidance to cover all scenarios. The guidance states that project sponsors should coordinate with FHWA Division Offices regarding financial plan submittals for projects other than design/bid/build. No changes have been made to the guidance.

Comment: The MnDOT recommends that the FHWA Division Office Financial Manager should be the one designated contact to ensure conformity across plans.

FHWA Response: The guidance is intended to ensure that consistency of financial plan reviews. It is at the discretion of each FHWA Division Office to designate points of contact for its oversight activities. No changes have been made to the guidance.

Comment: The WSDOT recommends annual updates be submitted no later than 90 days after the end of each reporting period or ''unless otherwise specified in other project related obligations (*e.g.* TIFIA agreements).''

FHWA Response: The guidance recognizes that TIFIA agreements may affect submission dates and reporting periods in the Financial Plans Including TIFIA Assistance section. The revision proposed by WSDOT for ''other project related obligations'' is too broad to be included since it could be interpreted that non-Federal project related obligations could impact the timing of annual update submissions. No changes have been made to the guidance.

Comment: The WSDOT recommends allowing a designee, delegated in writing from the Chief Executive Officer, to sign the project sponsor certification.

FHWA Response: It is acceptable for a designee delegated in writing from the Chief Executive Officer, to sign the project certification. The guidance has been revised to adopt this recommendation.

XIV: Project Description

Comment: The WSDOT recommends adding examples (*e.g.* for toll funding, local government pledged funding, etc.) in the Project Description of types of anticipated funding. The WSDOT further recommends providing examples of what should be included when evaluating the likelihood of anticipated amounts being dedicated.

FHWA Response: The guidance has been revised to remove the identification of funding in the Project

Description section of the guidance. The identification of funding for phased financial plans is discussed in the Project Funds section. Due to the varied characteristics of major projects, examples would not be able to cover the many potential scenarios and therefore, will not be included in the guidance. The FHWA staff will be available to discuss the different types of projects and project funding sources.

Comment: AASHTO recommends that the guidance not require an ''outline'' of the entire environmental review process. They stated that it should be sufficient to describe the components of the project as they are defined in the applicable NEPA document.

FHWA Response: It is important that FHWA has a clear understanding of the environmental review process since it results in the identification of the project scope. The term ''outline'' is used in the guidance to convey that a detailed discussion is not required. No changes have been made to the guidance.

XV. Project Cost

Comment: The AKDOT & PF and WSDOT recommend that including the costs of NEPA and other environmental documentation should be revisited. Large corridor projects often have multiple layers of environmental documentation that go back over many years. The AKDOT&PF recommends that FHWA should work with project sponsors to determine appropriate boundaries for these costs.

FHWA Response: The purpose of including NEPA and other environmental documentation costs is to have a total cost for the major project. The FHWA will continue to work with project sponsors to determine appropriate boundaries for all project costs. No changes have been made to the guidance.

Comment: The WSDOT, NDOT, and AASHTO recommend that FHWA allow for alternatives to the FHWA Cost Estimate Review (CER) process, including those developed by the project sponsor. The WSDOT and AASHTO further recommend that FHWA not mandate the use of 70th percentile costs.

FHWA Response: The guidance has been revised to address alternative CER processes or variations from the 70th percentile cost. Alternatives to the CER process and variations from the 70th percentile cost will be considered by FHWA on a case-by-case basis.

Comment: The NDOT questioned if CERs are needed for other specific milestones.

FHWA Response: CERs should be conducted prior to the submission of the initial financial plan. Major changes that occur in the project that significantly affect the estimated cost of the project should be evaluated to determine if an additional CER needs to be conducted. The guidance has been revised to include a reference to when additional CERs may be considered.

Comment: AASHTO recommends that the project sponsor participate in the CER.

FHWA Response: It is important for the project sponsor to participate in the CER since the project sponsor is often the best source to provide project information and answer questions. The guidance has been revised to indicate that the project sponsor should participate in the entire CER.

XVI. Project Funds

Comment: The CDOT commented that referring to advance construction funds as State funds will confuse the presentation of the financial plan. Providing a statement of amounts converted in the annual updates will achieve the desired objective. The CDOT recommends eliminating this requirement from the initial financial plan, but instead recommends reporting the conversion amounts in the annual update. The WisDOT recommends State DOTs be excluded from reporting annual conversion amounts when using advance construction to manage funds internally within a budget year, but not as a special funding technique that borrows from future Federal funds.

FHWA Reponses: The guidance has been revised to eliminate the reporting of estimated annual conversion amounts. Project sponsors should work with FHWA to identify a mutually agreeable method to show advance construction in the financial plans. In all cases the total special funding technique amount, the amount converted to date, and the amount remaining should be reported.

Comment: The WisDOT comments that there would be an inconsistency between financial plans and State budget authority if the financial plan included the annual conversion amounts.

FHWA Response: The guidance has been revised to clarify how special funding techniques are documented and that estimated annual conversion amounts do not need to be provided. The financial plan will only reflect actual conversion amounts and so there should be no inconsistency.

XVII. Financing Issues

Comment: E&Y and WSDOT recommend that financing from debt proceeds address project-specific debt, or incremental additional borrowing related to the project, and not programmatic financing. Similarly, AASHTO recommends that the guidance allow project sponsors discretion to determine the appropriate level of detail in discussing financing costs. When a project sponsor is not proposing project-specific borrowing, AASHTO recommends that the project sponsor should not be required to quantify borrowing costs. Where a project sponsor is proposing to issue bonds specifically for the project, AASHTO recommends that it should be sufficient for the financial plan to provide an estimate of annual payments and revenues.

FHWA Response: FHWA recognizes that project-specific financing cost information is more readily available. When project-specific debt is issued, the financial plan should show the total cost of financing for the project, which could be an estimate if that is the best information available at the time of the financial plan submission. The programmatic financing cost discussion would be at a programmatic level of detail. No changes have been made to the guidance.

Comment: The AKDOT&PF and WSDOT believe that the adequacy of the financial plan should be based on the ability to fully fund and complete construction, not on future debt service for non-Federal financing. The WisDOT recommends flexibility to allow project sponsors to determine the level of total debt financing for a project because at the time of the initial financial plan adoption, the total financing cost for a project is not known.

FHWA Response: The purpose of the Financing Issues section of the financial plan is to document financing costs and estimates to fully fund and complete construction of the project. Non-Federal financing will not be evaluated and FHWA will not make a determination on whether the project sponsor is capable of repayment. Any changes to the amount of financing costs or estimates can be reflected in annual updates to the initial financial plan. No changes have been made to the guidance.

XVIII. Cash Flow

Comment: E&Y and the NDOT recommend adding clarification or an example narrative for the discussion of the project sponsor's ability to deliver its capital program in the guidance. The

MnDOT and NDOT offer that the project sponsor could be allowed to refer to a current annual STIP Financial Report to demonstrate the project sponsor's ability to deliver its capital program.

FHWA Response: The guidance has been revised to remove the discussion on the overall impact of the project sponsor's ability to deliver the State transportation capital program. As discussed in the guidance, the review of the STIP is an important step by FHWA in the review and approval process for financial plans. This review of the STIP, along with the option of submitting a phased financial plan, makes further discussion on the overall impact of the project sponsor's ability to deliver its capital program unnecessary.

Comment: The MnDOT recommends that FHWA consider drawing on the expertise of financial credit rating agencies when assessing the credibility of a project sponsor for major projects.

FHWA Response: This guidance is not intended to document the FHWA methods and efforts required to assess the creditability of a project sponsor. This comment is outside the established scope of the guidance. No changes have been made to the guidance.

XIX. Public-Private Partnership Assessment

Comment: The PECG recommends that the P3 assessment include a complete cost-benefit analysis to deliver the project with a detailed list of contents in the analysis.

FHWA Response: Title 23 U.S.C. 106(h) requires the financial plan to include an assessment regarding the appropriateness of a P3 to deliver the project. The guidance includes appropriate discussion regarding the comparison of benefits and challenges of procuring the project as a P3 compared to traditional procurement methods. The guidance is intended to allow different assessment methods by project sponsors. No changes have been made to the guidance.

Comment: The PECG recommends that public servants be used, rather than private sector employees, to perform all construction inspection functions for P3 projects.

FHWA Response: This guidance is for the preparation of financial plans and is not intended to prescribe project sponsor decisions for how the project is managed, including how project inspection services will be performed. This comment is outside the established scope of the guidance. No changes have been made to the guidance.

Comment: E&Y and the NDOT recommend that FHWA should not second guess the project sponsor's delivery decision based on the P3 assessment.

FHWA Response: The purpose of the P3 assessment is to provide a brief documentation of the procurement decisionmaking process. The P3 assessment is not intended to prescribe a process for the project sponsor's delivery decision or to evaluate the decision of the project sponsor. The guidance is consistent with this purpose. No changes have been made to the guidance.

Comment: The AHTD recommends that if P3 mechanisms are not allowed by State law, there should be no reporting requirements. The WisDOT recommends that if there is no enabling legislation for P3s, then a generic statement to that effect will suffice for responding to this section. The AASHTO recommends that the consideration of a P3 be brief if it is obvious that a P3 is not viable because of State law and there is no reasonable basis for expecting that law to change.

FHWA Response: The guidance identifies the items that should be covered in the narrative to assess the appropriateness of a P3 to deliver the project. The absence of legislative authority is included in these items. Therefore, if State law does not allow the use of P3s, then the narrative should reflect that. No changes have been made to the guidance.

Comment: The AHTD recommends that when tolling, bonding, or TIFIA financing methods are not appropriate for the project, previous analyses should be adequate with no further reporting requirements.

FHWA Response: The guidance notes that the P3 assessment is a narrative describing the process used to consider whether a P3 procurement is appropriate to deliver the project. Referencing and summarizing previous analyses may be adequate to meet these criteria. No changes have been made to the guidance.

Comment: The MnDOT states that the analysis for a P3 delivery would be based on historic rather than recent consideration. The WSDOT recommends that only the results of earlier P3 analyses, if any, should be identified in the initial financial plan. Similarly, AASHTO recommends that the guidance should specify that the discussion of a P3 should include the reasons for or against using a P3 when the decision is made by the time the initial financial plan is submitted.

FHWA Response: A P3 assessment can be based on a previous project level analysis. If a P3 assessment has not been conducted at the time of the initial financial plan preparation, then an assessment must be done before the initial financial plan is submitted to meet the statutory requirements in 23 U.S.C. 106(h). The guidance has been revised to clarify when a P3 assessment is required for phased financial plans. The P3 assessment for the unfunded portion of a phased financial plan should be provided in annual updates as the portion of the project is added to the financial plan.

Comment: AASHTO recommends that annual updates to a financial plan should not be required to revisit the appropriateness of a P3, and that it should be sufficient for the annual updates to summarize the assessment that was included in the initial financial plan.

FHWA Response: There is no need to revisit the appropriateness of a P3 in the financial plan, except in the case of phased financial plans when a new portion of the project is added or when the procurement method changes to use a P3 or not. No changes have been made to the guidance.

XX. Final Major Project Financial Plan Guidance

The FHWA has updated its Major Project Financial Plan Guidance. The FHWA published the proposed guidance for public comment on September 6, 2013. After considering all the comments, the FHWA has incorporated all appropriate edits into the guidance. As such, the revised guidance, which can be found at *http://www.fhwa.dot.gov/ipd,* will be in effect for all financial plans submitted to FHWA February 2, 2015.

Authority: 23 U.S.C. 315; 23 CFR 633.104(a)

Issued On: December 9, 2014.

Greg G. Nadeau,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2014–29653 Filed 12–17–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 15, 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 January 20, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, 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 submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0879.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8426 (Final)—Certain Returned Magazines, Paperbacks or Records (IA–195–78).

Abstract: The final regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect to use a certain method of accounting, are affected.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 8,125.

OMB Number: 1545–1008.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8582—Passive Activity Loss Limitations.

Form: Form 8582.

Abstract: Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 8,451,989.

OMB Number: 1545–1773.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2014–55, Election Procedures and Information Reporting with Respect to Interests in Certain Canadian Retirement Plans.

Abstract: Revenue Procedure 2002–23 provided guidance for the application by U.S. citizens and residents of the U.S.-Canada Income Tax Treaty, as amended by the 1995 protocol, in order to defer U.S. income taxes on income accrued in certain Canadian retirement plans. This Revenue Procedure was superseded by Revenue Procedure 2014–55, which provides that such individuals will be treated as having made the election in the first year in which they would have been entitled to make the election under the treaty.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 10,000.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–29637 Filed 12–17–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0781]

Agency Information Collection (Disability Benefits Questionnaires—Group 4) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 20, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0781'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0781.''

SUPPLEMENTARY INFORMATION:

Titles

(a) Cranial Nerve Conditions Disability Benefits Questionnaire, VA Form 21–0960–C–3.

(b) Narcolepsy Disability Benefits Questionnaire, VA Form 21–0960–C–6.

(c) Fibromyalgia Disability Benefits Questionnaire, VA Form 21–0960–C–7.

(d) Seizure Disorders (Epilepsy) Disability Benefits Questionnaire, VA Form 21–0960–C–11.

(e) Oral and Dental Conditions Including Mouth, Lips and Tongue (Other than Temporomandibular Joint Conditions) Disability Benefits Questionnaire, VA Form 21–0960–D–1.

(f) Endocrine Diseases (other than Thyroid, Parathyroid or Diabetes Mellitus) Disability Benefits Questionnaire, VA Form 21–0960–E–2.

(g) Thyroid & Parathyroid Conditions Disability Benefits Questionnaire, VA Form 21–0960–E–3.

(h) Hernias (Including Abdominal, Inguinal, and Femoral Hernias) Disability Benefits Questionnaire, VA Form 21–0960–H–1.

(i) HIV-Related Illnesses Disability Benefits Questionnaire, VA Form 21–0960–I–2.

(j) Infectious Diseases (other than HIV-Related Illness, Chronic Fatigue Syndrome, or Tuberculosis) Disability Benefits Questionnaire, VA Form 21–0960I–3.

(k) Systemic Lupus Erythematosus (SLE) and Other Autoimmune Diseases Disability Benefits Questionnaire, VA Form 21–0960–I–4.

(l) Nutritional Deficiencies Disability Benefits Questionnaire, VA Form 21–0960–I–5.

(m) Urinary Tract (including Bladder & Urethra) Conditions (excluding Male Reproductive System) Disability Benefits Questionnaire, VA Form 21–0960–J–4.

(n) Respiratory Conditions (other than Tuberculosis and Sleep Apnea)

Disability Benefits Questionnaire, VA Form 21–0960–L–1.

(o) Loss of Sense of Smell and/or Taste Disability Benefits Questionnaire, VA Form 21–0960–N–3.

(p) Sinusitis/Rhinitis and Other Conditions of the Nose, Throat, Larynx, and Pharynx Disability Benefits Questionnaire, VA Form 21–0960–N–4.

(q) Chronic Fatigue Syndrome Disability Benefits Questionnaire, VA Form 21–0960–Q–1.

OMB Control Number: 2900–0781.

Type of Review: Revision

Abstract: Data collected on VA Form 21–0960 series will be used to obtain information from claimant's treating physician that is necessary to adjudicate a claim for disability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 28, 2014, at pages 51399–51400.

Affected Public: Individuals or households.

Estimated Annual Burden: 53,750 hours.

(a) VAF 21–0960–C–3—5,000
(b) VAF 21–0960–C–6—1,250
(c) VAF 21–0960–C–7—1,250
(d) VAF 21–0960–C–11—1,250
(e) VAF 21–0960–D–1—1,250
(f) VAF 21–0960–E–2—2,500
(g) VAF 21–0960–E–3—2,500
(h) VAF 21–0960–H–1—3,750
(i) VAF 21–0960–I–2—1,250
(j) VAF 21–0960–I–3—2,500
(k) VAF 21–0960–I–4—2,500
(l) VAF 21–0960–I–5—1,250
(m) VAF 21–0960–J–4—3,750
(n) VAF 21–0960–L–1—10,000
(o) VAF 21–0960–N–3—1,250
(p) VAF 21–0960–N–4—10,000
(q) VAF 21–0960–Q–1—2,500

Estimated Average Burden Per Respondent:

(a) VAF 21–0960–C–3—30 minutes
(b) VAF 21–0960–C–6—15 minutes
(c) VAF 21–0960–C–7—15 minutes
(d) VAF 21–0960–C–11—15 minutes
(e) VAF 21–0960–D–1—15 minutes
(f) VAF 21–0960–E–2—15 minutes
(g) VAF 21–0960–E–3—15 minutes
(h) VAF 21–0960–H–1—15 minutes
(i) VAF 21–0960–I–2—15 minutes
(j) VAF 21–0960–I–3—15 minutes
(k) VAF 21–0960–I–4—30 minutes
(l) VAF 21–0960–I–5—15 minutes
(m) VAF 21–0960–J–4—15 minutes
(n) VAF 21–0960–L–1—30 minutes
(o) VAF 21–0960–N–3—15 minutes
(p) VAF 21–0960–N–4—30 minutes
(q) VAF 21–0960–Q–1—15 minutes

Frequency of Response: On occasion.

Estimated Number of Respondents: TOTAL: 160,000.

(a) VAF 21–0960–C–3—10,000
(b) VAF 21–0960–C–6—5,000
(c) VAF 21–0960–C–7—5,000
(d) VAF 21–0960–C–11—5,000
(e) VAF 21–0960–D–1—5,000
(f) VAF 21–0960–E–2—10,000
(g) VAF 21–0960–E–3—10,000
(h) VAF 21–0960–H–1—15,000
(i) VAF 21–0960–I–2—5,000
(j) VAF 21–0960–I–3—10,000
(k) VAF 21–0960–I–4—5,000
(l) VAF 21–0960–I–5—5,000
(m) VAF 21–0960–J–4—15,000
(n) VAF 21–0960–L–1—20,000
(o) VAF 21–0960–N–3—5,000
(p) VAF 21–0960–N–4—20,000
(q) VAF 21–0960–Q–1—10,000

Dated: December 15, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29630 Filed 12–17–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Thursday,
No. 243 December 18, 2014

Part II

Environmental Protection Agency

40 CFR Part 63
NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2013–0290 and EPA–HQ–OAR–2013–0291; FRL–9913–58–OAR]

RIN 2060–AP69

NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing national emission standards for hazardous air pollutants (NESHAP) for brick and structural clay products manufacturing and NESHAP for clay ceramics manufacturing. The EPA is proposing that all major sources in these categories meet maximum achievable control technology (MACT) standards for mercury, non-mercury metal hazardous air pollutants (HAP) (or particulate matter (PM) surrogate) and dioxins/furans (Clay Ceramics only); health-based standards for acid gas HAP; and work practice standards, where applicable. The proposed rule, which has been informed by input from industry and other stakeholders, including small businesses, would protect air quality and promote public health by reducing emissions of HAP listed in section 112 of the Clean Air Act (CAA).

DATES: *Comments.* Comments must be received on or before February 17, 2015. A copy of comments on the information collection provisions should be submitted to the Office of Management and Budget (OMB) on or before January 20, 2015.

Public Hearing. If anyone contacts the EPA requesting a public hearing by January 15, 2014 the EPA will hold a public hearing on January 20, 2015 from 1:00 p.m. [Eastern Standard Time] to 5:00 p.m. [Eastern Standard Time] at the U.S. Environmental Protection Agency building located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. If the EPA holds a public hearing, the EPA will keep the record of the hearing open for 30 days after completion of the hearing to provide an opportunity for submission of rebuttal and supplementary information.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0291 for Brick and Structural Clay Products Manufacturing and EPA–HQ–OAR–2013–0290 for Clay Ceramics Manufacturing, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: A-and-R-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2013–0291 for Brick and Structural Clay Products Manufacturing or EPA–HQ–OAR–2013–0290 for Clay Ceramics Manufacturing in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. EPA–HQ–OAR–2013–0291 (for Brick and Structural Clay Products Manufacturing) or EPA–HQ–OAR–2013–0290 (for Clay Ceramics Manufacturing), 1200 Pennsylvania Ave. NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.
- *Hand/Courier Delivery:* EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0291 for Brick and Structural Clay Products Manufacturing or EPA–HQ–OAR–2013–0290 for Clay Ceramics Manufacturing. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/dockets.*

Docket. The EPA has established dockets for this rulemaking under Docket ID No. EPA–HQ–OAR–2013–0291 for Brick and Structural Clay Products Manufacturing and Docket ID No. EPA–HQ–OAR–2013–0290 for Clay Ceramics Manufacturing. All documents in the dockets are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in regulations.gov or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. If requested by January 15, 2014, we will hold a public hearing on January 20, 2015, from 1:00 p.m. [Eastern Standard Time] to 5:00 p.m. [Eastern Standard Time] at the U.S. Environmental Protection Agency building located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Please contact Ms. Pamela Garrett of the Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–7966; email address: *garrett.pamela@epa.gov;* to request a hearing, register to speak at the hearing or to inquire as to whether or not a hearing will be held. The last day to pre-register in advance to speak at the hearing will be December 30, 2014. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although

preferences on speaking times may not be able to be fulfilled. If you require the service of a translator or special accommodations such as audio description, we ask that you pre-register for the hearing, as we may not be able to arrange such accommodations without advance notice. The hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Again, a hearing will not be held on this rulemaking unless requested. A hearing needs to be requested by December 23, 2014. Again, please contact Ms. Pamela Garrett of the Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–7966; email address: *garrett.pamela@epa.gov* to request a hearing.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed rule for Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing, contact Ms. Sharon Nizich, Minerals and Manufacturing Group, Sector Policies and Program Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–2825; Fax number: (919) 541–5450; Email address: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. This preamble includes several acronyms and terms used to describe industrial processes, data inventories and risk modeling. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

3×RDL representative detection level values multiplied by three
ACI activated carbon injection
AEGL Acute Exposure Guideline Level
AERMOD air dispersion model used by the HEM–3 model
APCD air pollution control device
ATSDR Agency for Toxic Substances and Disease Registry
BDL below detection limit
BLD bag leak detection
BSCP brick and structural clay products
CAA Clean Air Act
CalEPA California EPA
CAS Chemical Abstract Services
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
Cl_2 chlorine
CO carbon monoxide
CPMS continuous parameter monitoring system
DHHS Department of Health and Human Services
DIFF dry lime injection fabric filter
DLA dry limestone adsorber
DLL detection level limited
DLS/FF dry lime scrubber/fabric filter
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guideline
ERT Electronic Reporting Tool
°F degrees Fahrenheit
FF fabric filter
FTIR Fourier transform infrared
gr/dscf grains per dry standard cubic foot
HAP hazardous air pollutant
HCl hydrogen chloride
HEM–3 Human Exposure Model (Community and Sector version 1.3.1)
HF hydrogen fluoride
Hg mercury
HQ hazard quotient
IARC International Agency for Research on Cancer
ICR information collection request
IOM Institute of Medicine
IRFA initial regulatory flexibility analysis
IRIS Integrated Risk Information System
K kurtosis statistic
lb/hr pounds per hour
lb/ton pounds per ton
LML lowest measured level
MACT maximum achievable control technology
mg/m^3 milligrams per cubic meter
MMBtu/yr million British thermal units per year
MRL Minimal Risk Level
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NESHAP national emissions standards for hazardous air pollutants
ng/dscm nanograms per dry standard cubic meter
No. number
NO_2 nitrogen dioxide
NOAEL no observable adverse effect level
non-Hg non-mercury
NO_X nitrogen oxides
NTTAA National Technology Transfer and Advancement Act
O_2 oxygen
OM&M operation, maintenance and monitoring
OMB Office of Management and Budget
PIC products of incomplete combustion
PLC programmable logic controller
PM particulate matter
$PM_{2.5}$ particulate matter with particles less than 2.5 micrometers in diameter
RDL representative detection level
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RIA Regulatory Impact Analysis
S skewness statistic
SBA Small Business Administration
SBAR Small Business Advocacy Review
SBE Standard Brick Equivalent
SBREFA Small Business Regulatory Enforcement Fairness Act
SEK standard error of kurtosis
SER small entity representative
SES standard error of skewness
SO_2 sulfur dioxide
SSM startup, shutdown and malfunction
TCDD tetrachlorodibenzo-p-dioxin
TEQ 2,3,7,8-TCDD toxic equivalents
TOSHI target organ-specific hazard index
tph tons per hour
tpy tons per year
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
µg/dscm micrograms per dry standard cubic meter
$\mu g/m^3$ micrograms per cubic meter
UPL Upper Prediction Limit
VCS voluntary consensus standards
VE visible emissions
WHO World Health Organization

Organization of This Document. The information in this preamble is organized as follows:

I. General Information
A. Executive Summary
B. Does this action apply to me?
C. Where can I get a copy of this document and other related information?
D. What should I consider as I prepare my comments for the EPA?
II. Background Information
A. What is the statutory authority for the proposed rule?
B. What is the background for startup, shutdown and malfunction?
C. What is the history of the proposed rule?
D. What are the health effects of pollutants emitted from the Brick and Structural Clay Products and Clay Ceramics Manufacturing source categories?
III. Summary of the Proposed Rule for the Brick and Structural Clay Products Manufacturing Source Category
A. What source category is affected by the proposed rule?
B. What are the affected sources?
C. Does the proposed rule apply to me?
D. What emission limitations and work practice standards must I meet?
E. What are the startup and shutdown requirements?
F. What are the testing and initial compliance requirements?
G. What are the continuous compliance requirements?
H. What are the notification, recordkeeping and reporting requirements?
I. How would I submit emissions test results to the EPA?
IV. Rationale for the Proposed Rule for Brick and Structural Clay Products Manufacturing
A. How did the EPA determine which sources would be regulated under the proposed rule?
B. How did the EPA select the format for the proposed rule?
C. How did the EPA consider different subcategories?
D. What approaches did the EPA consider in developing the proposed emission limitations for existing and new sources?
E. How did the EPA determine the MACT floors for existing sources?
F. How did the EPA determine the MACT floor for new sources?
G. What is our approach for applying the upper prediction limit to limited datasets?
H. How did the EPA consider beyond-the-floor for existing sources?
I. How did the EPA consider beyond-the-floor for new sources?
J. How did the EPA determine whether to set health-based standards for existing and new sources?
K. How did the EPA determine whether to set work practice standards for existing and new sources?
L. How did the EPA develop the startup and shutdown requirements?
M. How did the EPA select the compliance requirements?
N. How did the EPA determine compliance times for the proposed rule?
O. How did the EPA determine the required records and reports for the proposed rule?
P. How does the proposed rule affect permits?
Q. What are the alternate approaches the EPA is considering?
V. Summary of the Proposed Rule for the Clay Ceramics Manufacturing Category
A. What source category is affected by the proposed rule?
B. What are the affected sources?
C. Does the proposed rule apply to me?
D. What emission limitations and work practice standards must I meet?
E. What are the startup and shutdown requirements?
F. What are the testing and initial compliance requirements?
G. What are the continuous compliance requirements?
H. What are the notification, recordkeeping and reporting requirements?
I. How would I submit emissions test results to the EPA?
VI. Rationale for the Proposed Rule for Clay Ceramics Manufacturing
A. How did the EPA determine which sources would be regulated under the proposed rule?
B. How did the EPA select the format for the proposed rule?
C. How did the EPA consider different subcategories?
D. What approaches did the EPA consider in developing the proposed emission limitations for existing and new sources?
E. How did the EPA determine the MACT floors for existing sources?
F. How did the EPA determine the MACT floors for new sources?
G. What is our approach for applying the upper prediction limit to limited datasets?
H. How did the EPA consider beyond-the-floor for existing sources?
I. How did the EPA consider beyond-the-floor for new sources?
J. How did the EPA determine whether to set health-based standards for existing and new sources?
K. How did the EPA determine whether to set work practice standards for existing and new sources?
L. How did the EPA develop the startup and shutdown requirements?
M. How did the EPA select the compliance requirements?
N. How did the EPA determine compliance times for the proposed rule?
O. How did the EPA determine the required records and reports for the proposed rule?
P. How does the proposed rule affect permits?
VII. Summary of the Environmental, Energy and Economic Impacts of the Proposed Standards
A. What are the cost and emission reduction impacts?
B. What are the secondary impacts?
C. What are the economic impacts?
D. What are the social costs and benefits of the proposed rule?
VIII. Public Participation and Request for Comment
IX. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

Section 112(d) of the CAA requires the EPA to set emissions standards for HAP emitted by major stationary sources based on the performance of the MACT. We issued the NESHAP for Brick and Structural Clay Products (BSCP) manufacturing and the NESHAP for Clay Ceramics Manufacturing on May 16, 2003. The two NESHAP were vacated and remanded by the United States Court of Appeals for the District of Columbia Circuit on March 13, 2007. To address the vacatur and remand of the original NESHAP, we are proposing new standards for BSCP manufacturing and clay ceramics manufacturing.

2. Summary of the Major Provisions

BSCP NESHAP. The EPA is proposing MACT emission limits for mercury (Hg) and non-mercury (non-Hg) HAP metals (or PM surrogate) and a health-based emission limit for acid gases (hydrogen fluoride (HF), hydrogen chloride (HCl) and chlorine (Cl_2)) for BSCP tunnel kilns. In addition, the EPA is proposing work practice standards for periodic kilns, for dioxins/furans from tunnel kilns and for periods of startup and shutdown for tunnel kilns. To demonstrate compliance with the emission limits, the EPA is proposing initial and repeat 5-year performance testing for the regulated pollutants, continuous parameter monitoring and daily visible emissions (VE) checks. Owners/operators whose BSCP tunnel kilns are equipped with a fabric filter (FF) (*e.g.,* dry lime injection fabric filter (DIFF), dry lime scrubber/fabric filter (DLS/FF)) have the option of

demonstrating compliance using a bag leak detection (BLD) system instead of daily VE checks.

Clay Ceramics NESHAP. The EPA is proposing MACT emission limits for Hg, PM (surrogate for non-Hg HAP metals) and dioxins/furans and health-based emission limits for acid gases (HF and HCl) for sanitaryware tunnel kilns and ceramic tile roller kilns. In addition, the EPA is proposing MACT emission limits for dioxins/furans for ceramic tile spray dryers and floor tile press dryers, MACT emission limits for Hg and PM (surrogate for non-Hg HAP metals) for ceramic tile glaze lines and MACT emission limits for PM (surrogate for non-Hg HAP metals) for sanitaryware glaze spray booths. The EPA is also proposing work practice standards for shuttle kilns and for periods of startup and shutdown. To demonstrate compliance with the emission limits, the EPA is proposing initial and repeat 5-year performance testing for the regulated pollutants, continuous parameter monitoring and daily VE checks. Owners/operators whose affected sources are equipped with a FF (*e.g.,* DIFF, DLS/FF) have the option of demonstrating compliance using a BLD system instead of daily VE checks.

3. Costs and Benefits

Table 1 of this preamble summarizes the costs and benefits of this proposed action for 40 CFR part 63, subpart JJJJJ (BSCP Manufacturing NESHAP), while Table 2 of this preamble summarizes the costs of this proposed action for 40 CFR part 63, subpart KKKKK (Clay Ceramics Manufacturing NESHAP). See section VII of this preamble for further discussion of the costs and benefits for the BSCP Manufacturing NESHAP and the costs for the Clay Ceramics Manufacturing NESHAP. See section IX.B of this preamble for discussion of the recordkeeping and reporting costs.

TABLE 1—SUMMARY OF THE COSTS AND BENEFITS OF 40 CFR PART 63, SUBPART JJJJJ

[Millions of 2011 dollars]

Requirement	Capital cost	Annual cost	Net benefit
Emission controls	$54.9	$18.4	$26 to $99.
Emissions testing	0.977	0.238	
Monitoring	.....	0.346	

TABLE 2—SUMMARY OF THE COSTS OF 40 CFR PART 63, SUBPART KKKKK

[Millions of 2011 dollars]

Requirement	Capital cost	Annual cost
Emission controls	$0	$0
Emissions testing	0.102	0.0249
Monitoring	.....	0.0209

B. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed standards are shown in Table 3 of this preamble:

TABLE 3—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Category	NAICS code [a]	Examples of potentially regulated entities
Industry	327120	Brick, structural clay and extruded tile manufacturing facilities (BSCP NESHAP); and ceramic wall and floor tile manufacturing facilities (Clay Ceramics NESHAP).
	327110	Vitreous plumbing fixtures (sanitaryware) manufacturing facilities (Clay Ceramics NESHAP).
Federal government	.....	Not affected.
State/local/tribal government	.....	Not affected.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, organization, etc., would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.8385 of subpart JJJJJ (BSCP Manufacturing NESHAP) or 40 CFR 63.8535 of subpart KKKKK (Clay Ceramics Manufacturing NESHAP). If you have any questions regarding the applicability of this proposed action to a particular entity, contact either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet through the EPA's Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *http://www.epa.gov/ttn/atw/brick/brickpg.html*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same Web site.

D. What should I consider as I prepare my comments for the EPA?

Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly

mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2013–0291 (for BSCP Manufacturing NESHAP) or Docket ID No. EPA–HQ–OAR–2013–0290 (for Clay Ceramics Manufacturing NESHAP).

II. Background Information

A. What is the statutory authority for the proposed rule?

Section 112(d) of the CAA requires the EPA to set emissions standards for HAP emitted by major stationary sources based on the performance of the MACT. The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources (for which the Administrator has emissions information) or the best performing five sources for source categories with less than 30 sources (CAA section 112(d)(3)(A) and (B)). This level of minimum stringency is called the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar source (CAA section 112(d)(3)). The EPA also must consider more stringent ''beyond-the-floor'' control options. When considering beyond-the-floor options, the EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account the associated costs, energy and nonair environmental impacts.

B. What is the background for startup, shutdown and malfunction?

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of startup, shutdown and malfunction (SSM). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously.

Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained in sections IV.L and VI.L of this preamble, has proposed alternate standards for some sources during those periods.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition sudden, infrequent and not reasonably preventable failures of emissions control, process or monitoring equipment. The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. Under section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the U.S. Court of Appeals for the District of Columbia Circuit has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the agency to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting section CAA 112 standards.

Further, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. For these reasons, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. *See, e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' '') *See also, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations, and the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards

that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

C. What is the history of the proposed rule?

Pursuant to CAA section 112(c)(5), the EPA was originally required to promulgate standards for the BSCP Manufacturing and Clay Ceramics Manufacturing source categories by November 2000. The agency initially promulgated standards for these categories in 2003. See 68 FR 26690 (May 16, 2003). Those standards were challenged and subsequently vacated by the Court of appeals for the District of Columbia Circuit in 2007. *See Sierra Club* v. *EPA,* 479 F.3d 875, 876 (D.C. Cir. 2007). In 2008, Sierra Club filed suit in the Court of Appeals for the District of Columbia Circuit under CAA section 304(a)(2), alleging that the EPA had a continuing mandatory duty to promulgate standards for these categories under CAA section 112 based on the 2000 deadline under CAA section 112(c)(5). The EPA challenged that claim in a motion to dismiss, arguing that the mandatory duty to act by the 2000 deadline was satisfied by the 2003 rule and that the 2007 vacatur of the 2003 rule did not recreate the statutory duty to act by the 2000 deadline. Ultimately, the District Court found that the vacatur of the 2003 rule recreated the mandatory duty to set standards by 2000 and held that Sierra Club's claims could continue. *See Sierra Club* v. *EPA,* 850 F.Supp.2d 300 (D.D.C. 2012). The EPA and Sierra Club then negotiated a consent decree to settle the litigation and establish proposal and promulgation deadlines for establishing standards for these categories.

Following the 2007 vacatur of the 2003 rule, the EPA began efforts to collect additional data to support new standards for the BSCP and clay ceramics industries. The EPA conducted an initial information collection effort in 2008 to update information on the inventory of affected units, hereafter referred to as ''the 2008 EPA survey.'' The EPA conducted a second information collection effort in 2010 to obtain additional emissions data and information on each facility's SSM procedures, hereafter referred to as ''the 2010 EPA survey.'' The information collected as part of these surveys and not claimed as CBI by respondents is available in Docket ID Nos. EPA–HQ–OAR–2013–0290 and EPA–HQ–OAR–2013–0291. In addition, the dockets A–99–30 and OAR–2002–0054 are incorporated by reference for BSCP. The dockets A–2000–48, OAR–2002–0055 and EPA–HQ–OAR–2006–0424 are incorporated by reference for clay ceramics.

D. What are the health effects of pollutants emitted from the Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing source categories?

The proposed rule protects air quality and promotes the public health by reducing emissions of HAP emitted from BSCP and clay ceramics kilns. Emissions data collected during development of the proposed rule shows that acid gases such as HF, HCl and Cl_2 represent the predominant HAP emitted by BSCP and clay ceramics kilns, accounting for 99.3 percent of the total HAP emissions. These kilns also emit lesser amounts of other HAP compounds such as HAP metals and dioxins/furans, accounting for about 0.7 percent of total HAP emissions. The HAP metals emitted include antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel and selenium. Exposure to these HAP, depending on exposure duration and levels of exposures, can be associated with a variety of adverse health effects. These adverse health effects could include chronic health disorders (*e.g.,* irritation of the lung, skin and mucus membranes, effects on the central nervous system and damage to the kidneys) and acute health disorders (*e.g.,* lung irritation and congestion, alimentary effects such as nausea and vomiting and effects on the kidney and central nervous system). We have classified two of the HAP as human carcinogens (arsenic and chromium VI) and four as probable human carcinogens (cadmium, lead, dioxins/furans and nickel).

III. Summary of the Proposed Rule for the Brick and Structural Clay Products Manufacturing Source Category

This section summarizes the requirements for the BSCP Manufacturing source category proposed in today's action. Section IV of this preamble provides our rationale for the proposed requirements.

A. What source category is affected by the proposed rule?

Today's proposed rule for BSCP Manufacturing applies to BSCP manufacturing facilities that are located at or are part of a major source of HAP emissions. The BSCP Manufacturing source category includes those facilities that manufacture brick (face brick, structural brick, brick pavers and other brick); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products.

B. What are the affected sources?

The affected sources, which are the portions of each source in the category for which we are setting standards, are: (1) all tunnel kilns at a BSCP manufacturing facility; and (2) each periodic kiln. For purposes of this proposed BSCP manufacturing rule, tunnel kilns are defined to include any type of continuous kiln used at BSCP manufacturing facilities, including roller kilns.

Tunnel kilns are fired by natural gas or other fuels, including sawdust. Sawdust firing typically involves the use of a sawdust dryer because sawdust typically is purchased wet and needs to be dried before it can be used as fuel.

Consequently, some sawdust-fired tunnel kilns have two process streams, including: (1) A process stream that exhausts directly to the atmosphere or to an APCD and (2) a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere. Both process streams are subject to the requirements of today's proposed BSCP manufacturing rule.

The following BSCP process units are not subject to the requirements of today's proposed rule: (1) kilns that are used exclusively for setting glazes on previously fired products and (2) dryers. See section IV.A of this preamble for information on why these sources are not subject to the proposed BSCP manufacturing rule.

C. Does the proposed rule apply to me?

This proposed BSCP manufacturing rule applies to owners or operators of an affected source at a major source meeting the requirements discussed previously in this preamble. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

D. What emission limitations and work practice standards must I meet?

1. Emission Limitations

We are proposing a choice of emission limits for total non-Hg HAP metals for all new and existing tunnel kilns. The options include a total non-Hg HAP metals limit (pounds per hour (lb/hr)) and options for limiting PM as a surrogate for non-Hg HAP metals (pounds per ton (lb/ton) or grains per dry standard cubic foot (gr/dscf) at 7 percent oxygen (O_2)). We are also proposing a choice of emission limits for Hg (lb/ton, lb/hr or micrograms per dry standard cubic meter (µg/dscm) at 7 percent O_2) for new and existing tunnel kilns in two subcategories based on kiln size. In this proposed BSCP manufacturing rule, a large tunnel kiln is defined as a new or existing tunnel kiln with a design capacity of 10 tons per hour (tph) or greater and a small tunnel kiln is defined as a new or existing tunnel kiln with a design capacity of less than 10 tph. We are also proposing an emission limit for HCl-equivalent for all existing and new tunnel kilns at the facility to reduce the acid gases HF, HCl and Cl_2. The proposed emission limits for Hg and non-Hg HAP metals are presented in Table 4 of this preamble.

TABLE 4—PROPOSED TOTAL NON-MERCURY HAP METALS AND MERCURY EMISSION LIMITS FOR BRICK AND STRUCTURAL CLAY PRODUCTS TUNNEL KILNS

Subcategory	Acid gases	Total non-Hg HAP metals	Hg
Limits for existing sources			
Large tunnel kilns (≥ 10 tph)			2.2 E–05 lb/ton OR 2.7 E–04 lb/hr OR 29 µg/dscm at 7-percent O_2 for each existing large tunnel kiln at facility.
Small tunnel kilns (< 10 tph)			2.0 E–04 lb/ton OR 0.0011 lb/hr OR 70 µg/dscm at 7-percent O_2 for each existing small tunnel kiln at facility.
All tunnel kilns	57 lb/hr HCl-equivalent for collection of all existing tunnel kilns at facility.	0.16 lb/ton PM OR 0.040 gr/dscf PM at 7 percent O_2 OR 0.023 lb/hr non-Hg HAP metals for each existing tunnel kiln at facility.	
Limits for new sources			
Large tunnel kilns (≥ 10 tph)			2.0 E–05 lb/ton OR 2.4 E–04 lb/hr OR 13 µg/dscm at 7-percent O_2 for each new large tunnel kiln at facility.
Small tunnel kilns (< 10 tph)			2.0 E–04 lb/ton OR 0.0011 lb/hr OR 70 µg/dscm at 7-percent O_2 for each new small tunnel kiln at facility.
All tunnel kilns	57 lb/hr HCl-equivalent for collection of all new tunnel kilns at facility.	0.022 lb/ton PM OR 0.0066 gr/dscf PM at 7-percent O_2 OR 0.0032 lb/hr non-Hg HAP metals for each new tunnel kiln at facility.	

2. Work Practice Standards

We are proposing work practice standards for BSCP periodic kilns in lieu of HAP emission limits. The work practice standards would require developing and using a designed firing time and temperature cycle for each product produced in the periodic kiln; labeling each periodic kiln with the maximum load (in tons) that can be fired in the kiln during a single firing cycle; documenting the total tonnage placed in the kiln for each load to ensure that it is not greater than the maximum load; developing and implementing maintenance procedures for each kiln that specify the frequency of inspection and maintenance; and developing and maintaining records for each periodic kiln, including logs to document the proper operation and maintenance procedures of the periodic kilns.

We are also proposing work practice standards for BSCP tunnel kilns in lieu of dioxin/furan emission limits. The

work practice standards would require maintaining and inspecting the burners and associated combustion controls (as applicable); tuning the specific burner type to optimize combustion; keeping records of each burner tune-up; and submitting a report for each tune-up conducted.

E. What are the startup and shutdown requirements?

The EPA's position on SSM events is discussed in section II.B of this preamble. Standards for periods of startup and shutdown are discussed in this section.

We are proposing the work practice standards described in this paragraph for periods of startup and shutdown for BSCP tunnel kilns with APCD. For startup, the owner or operator would be required to vent the exhaust from the kiln through the APCD by the time the kiln exhaust temperature reaches 400 degrees Fahrenheit (°F). In addition, no bricks or other product may be introduced to the kiln until the kiln exhaust temperature reaches 400 °F and the exhaust is being vented through the APCD. For shutdown, the owner or operator would be required to vent the exhaust from the kiln through the APCD until the kiln exhaust temperature falls below 300 °F. In addition, no bricks or other product may be put into the kiln once the kiln exhaust temperature falls to 300 °F and the exhaust is no longer being vented through the APCD. When the kiln exhaust is being vented through the APCD, the owner or operator would be required to comply with the applicable continuous compliance requirements described in section III.G of this preamble.

We are proposing work practice standards for periods of startup and shutdown for BSCP tunnel kilns without an APCD as well. For startup, no bricks or other product may be introduced to the kiln until the kiln exhaust temperature reaches 400 °F. For shutdown, no bricks or other product may be put into the kiln once the kiln exhaust temperature falls to 300 °F.

F. What are the testing and initial compliance requirements?

We are proposing that owners or operators of all affected sources subject to emission limits conduct an initial performance test using specified EPA test methods to demonstrate initial compliance with all applicable emission limits. A performance test would have to be conducted before renewing the facility's 40 CFR part 70 operating permit or at least every five years following the initial performance test, as well as when an operating limit parameter value is being revised.

Under today's proposed BSCP manufacturing rule, the owner or operator would have to measure emissions of HF, HCl, Cl_2, Hg and PM (or non-Hg HAP metals). We are proposing that the owner or operator measure HF, HCl and Cl_2 using one of the following methods:

- EPA Method 26A, ''Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Isokinetic Method,'' 40 CFR part 60, appendix A–8;
- EPA Method 26, ''Determination of Hydrogen Chloride Emissions from Stationary Sources,'' 40 CFR part 60, appendix A–8, when no acid particulate (*e.g.,* HF, HCl or Cl_2 dissolved in water droplets emitted by sources controlled by a wet scrubber) is present;
- EPA Method 320, ''Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR'' 40 CFR part 63, appendix A, provided the test follows the analyte spiking procedures of section 13 of Method 320, unless the owner or operator can demonstrate that the complete spiking procedure has been conducted at a similar source; or
- Any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the General Provisions.

Following the performance test, the owner or operator would calculate the HCl-equivalent for the kiln using proposed Equation 2 in 40 CFR 63.8445(f)(2)(i). If there are multiple kilns at a facility, the owner or operator would sum the HCl-equivalent for each kiln using proposed Equation 3 in 40 CFR 63.8445(f)(2)(ii) to get the total facility HCl-equivalent and compare this value to the proposed limitation.

If the owner or operator chooses to comply with one of the two PM emission limits, we are proposing that the owner or operator measure PM emissions using one of the following methods:

- EPA Method 5, ''Determination of Particulate Emissions from Stationary Sources,'' 40 CFR part 60, appendix A–3;
- EPA Method 29, ''Determination of Metals Emissions From Stationary Sources,'' 40 CFR part 60, appendix A–8, where the test results would report the weight of the PM on the filter as PM filterable; or
- Any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the General Provisions.

If the owner or operator chooses to comply with the non-Hg HAP metals emission limit instead of one of the PM emission limits, the owner or operator would measure non-Hg HAP metals emissions using EPA Method 29 cited above or any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the General Provisions. The owner or operator may also use Method 29 or any other approved alternative method to measure Hg emissions.

The following paragraphs discuss the initial compliance requirements that we are proposing. Prior to the initial performance test, the owner or operator would need to install the continuous parameter monitoring system (CPMS) equipment to be used to demonstrate continuous compliance with the operating limits. During the initial test, the owner or operator would use the CPMS to establish site-specific operating parameter values that represent the operating limits.

For a DIFF or DLS/FF, we are proposing that the owner or operator ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the HF/HCl/Cl_2 performance test and record the feeder setting (on a per ton of fired product basis) for the three test runs. If the lime feed rate varies, the owner or operator would be required to determine the average feed rate from the three test runs. The average of the three test runs establishes the minimum site-specific feed rate operating limit. If there are different average feed rate values during the PM/non-Hg HAP metals and HF/HCl/Cl_2 tests, the highest of the average values becomes the site-specific operating limit. If a BLD system is present, the owner or operator would need to submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for BLD systems.

For a stand-alone FF (*i.e.,* no dry sorbent injection or DLS) and a BLD system, we are proposing that the owner or operator submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for BLD systems.

For a dry limestone adsorber (DLA), we are proposing that the owner or operator continuously measure the pressure drop across the DLA during the HF/HCl/Cl_2 performance test and determine the 3-hour block average pressure drop. The average of the three test runs establishes the minimum site-specific pressure drop operating limit. Alternatively, the owner or operator may continuously monitor the bypass stack damper position at least once every 15 minutes during the performance test. The owner or operator also would need to maintain an adequate amount of limestone in the limestone hopper, storage bin (located at the top of the DLA) and DLA at all times. In addition, the owner or operator would need to establish the limestone

feeder setting (on a per ton of fired product basis) 1 week prior to the performance test and maintain the feeder setting for the 1-week period that precedes the performance test and during the performance test. Finally, the owner or operator would need to document the source and grade of the limestone used during the performance test.

For a wet scrubber, we are proposing that the owner or operator continuously measure the scrubber pressure drop during the PM/non-Hg HAP metals performance test, the scrubber liquid pH and chemical addition rate (if applicable) during the HF/HCl/Cl_2 performance test and the scrubber liquid flow rate during both the PM/non-Hg HAP metals and HF/HCl/Cl_2 performance tests. For each wet scrubber parameter, the owner or operator would need to determine and record the average values for the three test runs and the 3-hour block average value. The average of the three test runs establishes the minimum site-specific pressure drop, liquid pH, liquid flow rate and chemical addition rate operating limits. If different average wet scrubber liquid flow rate values are measured during the PM/non-Hg HAP metals and HF/HCl/Cl_2 tests, the highest of the average values become the site-specific operating limit.

For an activated carbon injection (ACI) system, we are proposing that the owner or operator measure the activated carbon flow rate during the Hg performance test and determine the 3-hour block average flow rate. The average of the three test runs establishes the minimum site-specific activated carbon flow rate operating limit.

For a source with no APCD installed, we are proposing that the owner or operator calculate the maximum potential HCl-equivalent using proposed Equation 4 in 40 CFR 63.8445(g)(1)(i). The owner or operator would use the results from the performance test to determine the emissions at the maximum possible process rate. For example, if the design capacity of the kiln is 10 tph and the production rate during the performance test was 9 tph, then the test results represent 90 percent of the maximum potential emissions. If there are multiple kilns at a facility, the owner or operator would need to sum the maximum potential HCl-equivalent for each kiln to get the total facility maximum potential HCl-equivalent and compare this value to the proposed health-based emission limitation for acid gases. If the total facility maximum potential HCl-equivalent is greater than the proposed limitation, we are proposing that the owner or operator determine the maximum process rate for which the total facility maximum potential HCl-equivalent remains at or below the proposed limitation. If there are multiple kilns, the owner or operator would need to determine one or more combinations of maximum process rates that would result in a total facility maximum potential HCl-equivalent remains at or below the proposed limitation. The maximum process rate(s) would become the operating limit(s) for process rate.

G. What are the continuous compliance requirements?

Today's BSCP manufacturing rule proposes that the owner or operator demonstrate continuous compliance with each emission limitation that applies. The owner or operator would have to follow the requirements in the operation, maintenance and monitoring (OM&M) plan and document conformance with the OM&M plan. The owner or operator would need to operate a CPMS to monitor the operating parameters established during the initial performance test as described in the following paragraphs. The CPMS would have to collect data at least every 15 minutes, including at least three of four equally spaced data values (or at least 75 percent if there are more than four data values per hour) per hour to have a valid hour of data. The owner or operator would have to operate the CPMS at all times when the process is operating. The owner or operator would also have to conduct proper maintenance of the CPMS (including inspections, calibrations and validation checks) and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the recorded readings, the owner or operator would need to calculate and record the 3-hour block average values of each operating parameter. To calculate the average for each 3-hour averaging period, the owner or operator would need to have at least 75 percent of the recorded readings for that period.

For a DIFF or DLS/FF, we are proposing that the owner or operator demonstrate compliance with the acid gas (HF/HCl/Cl_2) health-based emission limit by maintaining free-flowing lime in the feed hopper or silo and to the APCD at all times. If lime is not flowing freely, according to load cell output, carrier gas/lime flow indicator, carrier gas pressure drop measurement system or other system, the owner or operator would have to promptly initiate and complete corrective actions according to the OM&M plan. The owner or operator would also have to maintain the feeder setting (on a per ton of fired product basis) at or above the level established during the HF/HCl/Cl_2 performance test and record the feeder setting once each shift.

The proposed rule would provide the option to use either a BLD system or VE monitoring to demonstrate compliance with the PM/non-Hg HAP metals emission limit.

For the option of a BLD system, we are proposing that the owner or operator initiate corrective action within 1 hour of a BLD system alarm and complete corrective actions according to the OM&M plan. The owner or operator would also need to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period. In calculating this operating time fraction, the owner or operator would not count any alarm time if inspection of the FF demonstrates that no corrective action is required. If corrective action is required, the owner or operator must count each alarm as a minimum of 1 hour. If corrective action is initiated more than 1 hour after an alarm, the owner or operator must count as alarm time the actual amount of time taken to initiate corrective action.

For the option of monitoring VE, we are proposing that the owner or operator perform daily, 15-minute VE observations in accordance with the procedures of EPA Method 22, ''Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares,'' 40 CFR part 60, appendix A–7. During the VE observations, the kiln would need to be operating under normal conditions. If VE are observed, the owner or operator would have to promptly initiate and complete corrective actions according to the OM&M plan. If no VE are observed in 30 consecutive daily EPA Method 22 tests, the owner or operator may decrease the frequency of EPA Method 22 testing from daily to weekly for that kiln stack. If VE are observed during any weekly test, the owner or operator would have to promptly initiate and complete corrective actions according to the OM&M plan and the owner or operator would need to resume EPA Method 22 testing of that kiln stack on a daily basis until no VE are observed in 30 consecutive daily tests, at which time the owner or operator may again decrease the frequency of EPA Method 22 testing to a weekly basis.

For a stand-alone FF, we are proposing that the owner or operator use a BLD system or monitor VE as described above to demonstrate compliance with the PM/non-Hg HAP metals emission limit.

For a DLA, we are proposing that the owner or operator demonstrate compliance with the acid gas (HF/HCl/Cl_2) health-based emission limit by collecting and recording data documenting the DLA pressure drop and reducing the data to 3-hour block averages. The owner or operator would need to maintain the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the HF/HCl/Cl_2 performance test. Alternatively, the owner or operator may continuously monitor the bypass stack damper position at least once every 15 minutes during normal kiln operation. Any period in which the bypass damper is opened allowing the kiln exhaust gas to bypass the DLA would trigger corrective actions according to the OM&M plan. The owner or operator also would need to verify that the limestone hopper, storage bin (located at the top of the DLA) and DLA contain an adequate amount of limestone by performing a daily visual check of the limestone hopper and the storage bin. A daily visual check could include one of the following: (1) conducting a physical check of the hopper; (2) creating a visual access point, such as a window, on the side of the hopper; (3) installing a camera in the hopper that provides continuous feed to a video monitor in the control room; or (4) confirming that load level indicators in the hopper are not indicating the need for additional limestone. If the hopper or storage bin does not contain adequate limestone, the owner or operator would have to promptly initiate and complete corrective actions according to the OM&M plan. The owner or operator also would have to record the limestone feeder setting daily (on a per ton of fired product basis) to verify that the feeder setting is being maintained at or above the level established during the HF/HCl/Cl_2 performance test. The owner or operator also would need to use the same grade of limestone from the same source as was used during the HF/HCl/Cl_2 performance test and maintain records of the source and type of limestone. Finally, the owner or operator would need to monitor VE, as described in the previous paragraph.

For a wet scrubber, we are proposing that the owner or operator continuously maintain the 3-hour block averages for scrubber pressure drop, scrubber liquid pH, scrubber liquid flow rate and chemical addition rate (if applicable) at or above the minimum values established during the applicable performance test. Maintaining the 3-hour block average for scrubber pressure drop at or above the minimum value established during the PM/non-Hg HAP metals performance test would demonstrate compliance with the PM/non-Hg HAP metals emission limit. Maintaining the 3-hour block average for scrubber liquid pH and chemical (*e.g.,* lime, caustic) addition rate at or above the minimum values established during the HF/HCl/Cl_2 performance test would demonstrate compliance with the acid gas (HF/HCl/Cl_2) health-based emission limit. Maintaining the 3-hour block average for scrubber liquid flow rate at or above the lowest minimum value established during the PM/non-Hg HAP metals and HF/HCl/Cl_2 performance tests would demonstrate compliance with all applicable emission limits by showing that the scrubber is in proper working order.

For an ACI system, we are proposing that the owner or operator demonstrate compliance with the Hg emission limit by continuously monitoring the activated carbon flow rate and maintaining it at or above the operating limit established during the Hg performance test.

For sources with no APCD, we are proposing that the owner or operator monitor VE as described above to demonstrate compliance with the PM/non-Hg HAP metals emission limit. In addition, if the last calculated total facility maximum potential HCl-equivalent was not at or below the proposed health-based emission limitation for acid gases, then we are proposing that the owner or operator collect and record data documenting the process rate of the kiln and reduce the data to 3-hour block averages. The owner or operator would need to maintain the kiln process rate at or below the kiln process rate operating limit(s) that would enable the total facility maximum potential HCl-equivalent to remain at or below the proposed limitation.

H. What are the notification, recordkeeping and reporting requirements?

All new and existing sources would be required to comply with certain requirements of the General Provisions (40 CFR part 64, subpart A), which are identified in proposed Table 8 of 40 CFR part 64, subpart JJJJJ. The General Provisions include specific requirements for notifications, recordkeeping and reporting.

Each owner or operator would be required to submit a notification of compliance status report, as required by 40 CFR 63.9(h) of the General Provisions. This proposed BSCP manufacturing rule would require the owner or operator to include in the notification of compliance status report certifications of compliance with rule requirements. Semiannual compliance reports, as required by 40 CFR 63.10(e)(3) of subpart A, would also be required for each semiannual reporting period.

This proposed BSCP manufacturing rule would require records to demonstrate compliance with each emission limit and work practice standard. These recordkeeping requirements are specified directly in the General Provisions to 40 CFR part 63 and are identified in proposed Table 8 of subpart JJJJJ.

Specifically, we are proposing that the owner or operator keep the following records:

- All reports and notifications submitted to comply with this proposed BSCP manufacturing rule.
- Records of performance tests.
- Records relating to APCD maintenance and documentation of approved routine control device maintenance exemption.
- Continuous monitoring data as required in this proposed BSCP manufacturing rule.
- Records of BLD system alarms and corrective actions taken.
- Records of each instance in which the owner or operator did not meet each emission limit (*i.e.,* deviations from operating limits).
- Records of production rates.
- Records of approved alternative monitoring or testing procedures.
- Records of maintenance and inspections performed on the APCD.
- Current copies of the OM&M plan and records documenting conformance.
- Logs of the information required to document compliance with the periodic kiln work practice standard.
- Records of burner tune-ups used to comply with the dioxin/furan work practice standard for tunnel kilns.
- Logs of the information required to document compliance with the startup and shutdown work practice standards.
- Records of each malfunction and the corrective action taken.

We are also proposing that the owner or operator submit the following reports and notifications:

- Notifications required by the General Provisions.
- Initial Notification no later than 120 calendar days after the affected source becomes subject to this subpart.
- Notification of Intent to conduct performance tests and/or other compliance demonstration at least 60 calendar days before the performance test and/or other compliance demonstration is scheduled.
- Notification of Compliance Status 60 calendar days following completion of a compliance demonstration that includes a performance test.
- Notification of Compliance Status 30 calendar days following completion of a

compliance demonstration that does not include a performance test (*i.e.,* compliance demonstrations for the work practice standards).

- Compliance reports semi-annually, including a report of the most recent burner tune-up conducted to comply with the dioxin/furan work practice standard and a report of each malfunction resulting in an exceedance and the corrective action taken.
- Results of each performance test within 60 days of completing the test, submitted to the EPA by direct computer-to-computer electronic transfer via EPA-provided software for data collected using supported test methods.

I. How would I submit emissions test results to the EPA?

In this proposal, the EPA is describing a process to increase the ease and efficiency of performance test data submittal while improving data accessibility. Specifically, the EPA is proposing that owners and operators of BSCP manufacturing facilities submit electronic copies of required performance test reports by direct computer-to-computer electronic transfer using EPA-provided software. The direct computer-to-computer electronic transfer is accomplished through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The CDX is the EPA's portal for submittal of electronic data. The EPA-provided software is called the Electronic Reporting Tool (ERT), which generates electronic reports of performance tests and evaluations. The ERT report package will be submitted using the CEDRI. The submitted report package will be stored in the CDX archive (the official copy of record) and the EPA's public database called WebFIRE. All stakeholders will have access to all reports and data in WebFIRE via the WebFIRE Report Search and Retrieval link (*http://cfpub.epa.gov/webfire/index.cfm?action=fire.searchERTSubmission*). A description and instructions for use of the ERT can be found on the ERT Web site (*http://www.epa.gov/ttn/chief/ert/index.html*), and CEDRI can be accessed through the CDX Web site (*www.epa.gov/cdx*).

The proposal to submit performance test data electronically to the EPA applies only to those performance tests conducted using test methods that are supported by the ERT at the time of the test. The ERT supports most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available on the ERT Web site.

We believe that the electronic submittal of reports increases the usefulness of the data contained in those reports, is in keeping with current trends in data availability and may ultimately result in less burden on the regulated community. Electronic reporting can eliminate paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies and providing data quickly and accurately to the affected sources, air agencies, the EPA and the public.

By making data readily available, electronic reporting increases the amount of data that can be used for the development of emission factors. The EPA has received feedback from stakeholders asserting that many of the EPA's emission factors are outdated or not representative of a particular industry emission source. While the EPA believes that the emission factors are suitable for their intended purpose, we also recognize that emissions profiles on different pieces of equipment can change over time due to a number of factors (fuel changes, equipment improvements, industry work practices), and it is important for emission factors to be updated to keep up with these changes. The EPA is currently pursuing emission factor development improvements that include procedures to incorporate the source test data that we are proposing be submitted electronically.

Emission factors are used in the development of emissions inventories, and improved emission factors means that the quality of these inventories will be improved more quickly than they would under the current paper reporting requirements. Emissions inventories are used for tracking emission trends and identifying potential sources of emissions for reduction. For example, the EPA's National Air Toxics Assessment (NATA) uses the EPA's National Emissions Inventory (NEI) in its screening level assessments to characterize the nationwide chronic cancer risk estimates and noncancer hazards from inhaling air toxics. The NATA is used as a screening tool for air agencies to prioritize pollutants, emission sources and locations of interest for further study to gain a better understanding of risks. Therefore, improving the quality of these inventories is an on-going goal for the agency and a benefit to the public, air agencies and the regulated community.

Additionally, the EPA, the regulated community and the public may benefit from electronic reporting when the EPA conducts its CAA-required technology and risk-based reviews. Because we will already have access to these reports, our ability to do comprehensive reviews will be increased and achieved within a shorter period of time. Under an electronic reporting system, the EPA would have performance test data in hand; thus, it is possible that fewer or less substantial information collection requests (ICRs) in conjunction with prospective CAA-required technology and risk-based reviews may be needed. This may result in a decrease in the need for industry staff time to respond to data collection requests. It may also allow the EPA to conduct these required reviews more quickly, as we will not have to include the ICR collection time in the process. While the regulated community may benefit from reduced ICRs, the general public benefits from the agency's ability to conduct these required reviews more quickly.

Electronic reporting could minimize submission of unnecessary or duplicative reports in cases where facilities report to multiple government agencies and the agencies opt to rely on the EPA's electronic reporting system to view report submissions. Where air agencies continue to require a paper copy of these reports and will accept a hard copy of the electronic report, facilities will have the option to print paper copies of the electronic reporting forms to submit to the air agencies, thus minimizing the time spent reporting to multiple agencies. Additionally, maintenance and storage costs associated with retaining paper records could likewise be minimized by replacing those records with electronic records of electronically submitted data and reports.

There are benefits of information that is submitted in a standardized format. Standardizing the reporting format will require the reporting of specific data elements, thereby helping to ensure completeness of the data and allowing for accurate assessment of data quality. Additionally, imbedded quality assurance checks will perform some of the required method calculations, reducing errors in test reports. And because the system is entirely electronic, it eliminates transcription errors in moving data from paper reports to data systems for analysis. These quality assurance checks and procedures will increase the accuracy of test report data, improve the overall quality of test data, and lead to more accurate emission factors and higher quality emissions inventories. These features benefit all users of the data.

Air agencies could benefit from more streamlined and automated review of the electronically submitted data. For example, because the performance test data would be readily-available in a standard electronic format, air agencies

would be able to review reports and data electronically rather than having to conduct a review of the reports and data manually. Having reports and associated data in electronic format will facilitate review through the use of software ''search'' options, as well as the downloading and analyzing of data in spreadsheet format. Additionally, air agencies would benefit from the reported data being accessible to them through the EPA's electronic reporting system whenever they want or need access (as long as they have access to the Internet). The ability to access and review information electronically will assist air agencies in more quickly determining compliance with emission standards. This benefits both air agencies and the general public.

The general public would also benefit from electronic reporting of emissions data because the data would be available for viewing sooner and would be easier for the public to access. The EPA Web site that stores the submitted electronic data is easily accessible to the public and provides a user-friendly interface that any stakeholder could access.

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data would save industry, air agencies and the EPA significant time, money and effort while also improving the quality of emission inventories and air quality regulations.

IV. Rationale for the Proposed Rule for Brick and Structural Clay Products Manufacturing

A. How did the EPA determine which sources would be regulated under the proposed rule?

In the BSCP manufacturing industry, the primary sources of HAP emissions are kilns, including tunnel kilns and periodic kilns. The HAP emitted from BSCP kilns include HF, HCl, Cl_2, Hg and other non-Hg HAP metals. At one time, dryers were a potential source of HF, HCl, Cl_2 and non-Hg HAP metals emissions, but the design and operation of kilns and dryers has changed such that emissions released from the heating of the raw materials and the products of combustion no longer pass from the kiln into the dryer. In addition, the 2010 EPA survey requested that owners/operators of specific dryers test for dioxins/furans, and none of the tests found detectable levels of dioxins/furans. See the technical memorandum ''Determination of ''Non-Detect'' Test Data for the BSCP Proposed Rule'' in Docket ID No. EPA–HQ–OAR–2013–0291. Other process units at BSCP manufacturing facilities (*e.g.,* raw material processing and handling) have not been found to emit measurable quantities of HAP. For this reason, the proposed rule covers existing and new kilns at major source BSCP manufacturing facilities which meet the applicability criteria in the rule.

BSCP kilns that do not meet the applicability criteria include kilns that are used exclusively for setting glazes on previously fired products. Nearly all of the acid gas emissions from the firing of BSCP products are released during the initial firing, so kilns that are used exclusively for setting glazes on previously fired products emit little to no HF, HCl or Cl_2.

B. How did the EPA select the format for the proposed rule?

For Hg and total non-Hg HAP metals, this proposed BSCP manufacturing rule provides owners and operators of regulated sources with a choice between a numerical emission rate limit as a mass of pollutant emitted per ton of bricks produced and a numerical emission limit in units of concentration. The selection of numerical emission rate limits and numerical emission limits as the format for this proposed BSCP manufacturing rule provides flexibility for the regulated community by allowing a regulated source to choose any control technology or technique to meet the emission limits, rather than requiring each unit to use a prescribed control method that may not be appropriate in each case. In addition, the selection of numerical emission rate limits as mass of pollutant emitted per ton of bricks produced ensures that differences in kiln sizes or production rates do not affect the level of emissions control achieved.

The PM limits are proposed as a surrogate for non-Hg HAP metals. The same control techniques that would be used to control PM will control non-Hg HAP metals. Particulate matter was also chosen instead of requiring control of specific individual HAP metals because all kilns do not emit the same type and amount of HAP metals due to differences in raw materials and fuels used to fire the kilns. However, most kilns generally emit PM that includes some amount and combination of HAP metals. The use of PM as a surrogate will also eliminate the cost of performance testing needed to comply with numerous standards for individual non-Hg HAP metals. We have used PM as a surrogate for non-Hg HAP metals NESHAP for other rules with similar processes (*e.g.,* Portland Cement Manufacturing, Lime Manufacturing).

Although we continue to believe that PM is a good surrogate for non-Hg HAP metals and that complying with a PM emission limit rather than non-Hg HAP metals limits will be less costly for most kilns, we understand that some owners and operators may find that meeting a total non-Hg HAP metals limit is less costly than meeting a PM limit. To provide that flexibility, we have developed an alternative compliance option of a numerical emission rate limit for total non-Hg HAP metals as a mass of pollutant emitted per hour. The ability to comply with this limit would provide additional flexibility for small tunnel kilns and tunnel kilns with a low metals content in the PM emissions and would achieve equivalent emission reductions to the options to limit PM.

For acid gases (HF, HCl and Cl_2), this proposed BSCP manufacturing rule includes a health-based emission limit as a mass of HCl-equivalent emitted per hour. Further discussion about the development of the health-based standard for the proposed BSCP manufacturing rule is provided in section IV.J of this preamble.

This proposed BSCP manufacturing rule includes work practices for dioxins/furans from tunnel kilns. As described in more detail in section IV.K.2 of this preamble, 83 percent of the dioxin/furan data collected during the ICR process were below the detection level and it is not practicable due to technological and economic limitations to apply measurement methodology to test for compliance with a numerical limit.

This proposed BSCP manufacturing rule also includes work practices for periodic kilns. As described in more detail in section IV.K.1 of this preamble, technological and economic limitations make it impracticable to measure compliance with numerical emission limits for BSCP periodic kilns.

C. How did the EPA consider different subcategories?

Section 112(d)(1) of the CAA allows the EPA to promulgate emission standards for either categories or subcategories of sources. Through subcategorization, we are able to define subsets of similar emission sources within a source category if differences in emissions characteristics, processes or opportunities for pollution prevention exist within the source category. Upon initial consideration of the available information on the BSCP manufacturing industry, we determined that separate subcategories for periodic kilns and tunnel kilns were warranted

for several reasons. First, periodic kilns are smaller than tunnel kilns (with lower production on an hourly basis, as well as accounting for only about 4 percent of total BSCP industry production). Second, periodic kilns are operated in batch cycles, whereas tunnel kilns operate continuously. Third, periodic kilns are typically operated at higher temperatures than tunnel kilns and products are typically heated in the kiln for longer periods than products fired in tunnel kilns, resulting in higher energy requirements. As noted in section IV.K.1 of this preamble, we have determined that it is technologically and economically infeasible to test periodic kilns, thereby ruling out a quantitative analysis of how these differences impact emissions. However, a qualitative comparison can be made, in that smaller kilns operated periodically (*i.e.,* periodic kilns) would be expected to have lower emissions over time compared to the larger, continuously operated tunnel kilns.

We then examined the potential for additional subcategories for tunnel kilns, including subcategorization based on kiln fuel and kiln size. Based on the available emissions test data, we could not discern differences in emissions based on fuel type. For that reason, we have not subcategorized by fuel type. We request comment, including additional data if appropriate, on whether we should subcategorize by fuel type. In particular, we request comment on whether we should create a subcategory for kilns fired with sawdust (with or without a sawdust dryer).

We then considered subcategorization of tunnel kilns based on kiln size. There are several differences between the design, operation and efficiency of larger kilns and smaller kilns. In particular, many small kilns are the older, less efficient kilns in the industry and newer kilns can be constructed to be larger and more efficient due to advances in design. Smaller, older kilns were constructed with large amounts of heavy refractory brick and are narrow and tall in shape, with high arched ceilings. Larger, newer kilns can be constructed with more efficient refractories and can include features such as fiber linings and insulating brick, resulting in a wider kiln with lower ceilings. In addition, the burners in a small kiln are generally less efficient and are located near the bottom of the kiln, where some of the heat is absorbed by the cars that move the bricks through the kiln rather than by the bricks themselves. In a large kiln, the burners are more efficient and are often located at the top of the kiln, where they can fire downward to the product. Combined with the kiln size and shape differences, the difference in burner efficiency and location results in a more even temperature distribution throughout the kiln and product in a large kiln than in a small kiln.

To assess whether these design and operation differences have an effect on emissions and provide support for defining size subcategories in the proposed BSCP manufacturing rule, we conducted a set of statistical analyses on the emissions dataset. In the vacated rule, ''small kilns'' were defined as kilns with a design capacity less than 10 tph and ''large kilns'' were defined as kilns with a design capacity of 10 tph or greater. The main goal of the statistical analyses was to determine if these definitions are supported by our current dataset. Because we have Cl_2, Hg and non-Hg HAP metals data for only about 10 percent of the kilns in the industry, we conducted the series analyses based on the HF, HCl and PM datasets, which are available for a much larger percentage of the kilns in the industry, providing more representative kiln datasets for the analyses.

We found that the median of the emissions data from kilns in the large kiln dataset was statistically different than the median of the emissions data from kilns in the small kiln dataset for all three pollutants. Also, based on a logistic model, we found high association between emissions and the hypothesized design capacity classification. Finally, we conducted a cluster analysis and considered all three pollutants together to investigate whether the combined dataset supported changing the definitions of small and large kilns. This cluster analysis supported the subcategory definitions from the vacated rule. (For more information on the statistical analyses, see ''Analysis of Potential Subcategories for BSCP Tunnel Kilns'' in Docket ID No. EPA–HQ–OAR–2013–0291.)

Based on the above information and analyses, we determined that differences in design and emissions exist between large (10 tph or greater) and small (less than 10 tph) kilns. Therefore, we are proposing to exercise our discretion to subcategorize based on kiln size for these kilns' emissions of Hg. As discussed in section IV.D of this preamble, we are not proposing to exercise our discretion to subcategorize for other pollutants.

D. What approaches did the EPA consider in developing the proposed emission limitations for existing and new sources?

All standards established pursuant to CAA section 112(d)(2) must reflect MACT, the maximum degree of reduction in emissions of air pollutants that the Administrator, taking into consideration the cost of achieving such emissions reductions and any nonair quality health and environmental impacts and energy requirements, determined is achievable for each category.

For existing sources, MACT cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources for categories and subcategories with 30 or more sources or the best performing five sources for subcategories with less than 30 sources. This requirement constitutes the MACT floor for existing sources. The CAA specifies that MACT for new sources shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source. This minimum level of stringency is the MACT floor for new units.

The EPA may not consider costs or other impacts in determining the MACT floor. However, the EPA must consider cost, nonair quality health and environmental impacts and energy requirements in connection with any standards that are more stringent than the MACT floor (beyond-the-floor controls).

The remainder of this section describes the development of the pool of data used to calculate the MACT floors for Hg and PM (as a surrogate for non-Hg HAP metals). As noted in section IV.J of this preamble, health-based emissions standards are being proposed for the acid gases HF, HCl and Cl_2 under the provisions of CAA section 112(d)(4). Consequently, the EPA has not prepared a MACT floor analysis for these pollutants.

1. Mercury

In our MACT floor analysis for Hg, we separated the sources into large kiln and small kiln subcategories, as described in section IV.C of this preamble. For each subcategory, we ranked the sources based on the data in terms of lb/ton (as described in section IV.E of this preamble) and identified the best performing 12 percent of sources. Once we identified the best performing kilns, we then calculated the MACT floor in units of lb/ton for each subcategory as described in section IV.E of this

preamble. We also calculated the MACT floor in lb/hr and concentration units (μg/dscm at 7-percent O_2) for each subcategory, based on the concentration emissions data for the same top 12 percent (best performing) sources as the lb/ton floor. This is further discussed in section IV.E of this preamble and in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Brick and Structural Clay Products'' in Docket ID No. EPA–HQ–OAR–2013–0291.

2. Total Non-Hg HAP Metals

We developed MACT floors for PM as a surrogate for total non-Hg HAP metals. The available PM data show that kilns controlled with a FF-based APCD (*e.g.,* DIFF, DLS/FF) as a group are better performers than kilns without FF-based controls. When we divided the kilns into two groups, one group consisting of kilns with a FF-based APCD and the other group consisting of uncontrolled kilns and kilns with a different type of APCD, we found that the test data for kilns with FF-based APCD showed they were consistently good performers, while the test data for kilns without a FF-based APCD varied widely. The worst performing kiln with a FF-based APCD performs better than the average kiln in the group without a FF-based APCD. The best performing 75 percent of the kilns with a FF-based APCD showed better performance than 80 percent of the kilns without a FF-based APCD. We also conducted a t-test on the averages of the two groups and we found that the average of the test data for kilns with FF-based APCD was statistically different from the average of the test data for kilns without a FF-based APCD (with 99-percent confidence). See the technical memorandum ''Analysis of Potential Subcategories in the BSCP Source Category'' in Docket ID No. EPA–HQ–OAR–2013–0291.

One consequence of the wide variability in emissions from kilns without a FF-based APCD is that there are a few uncontrolled kilns and kilns controlled with DLA with lower lb/ton emissions than some of the kilns controlled with a FF-based APCD. We understand that that the emissions from kilns with FF-based APCD will be consistently low over time, based on the design of these APCD and years of experience with these devices. On the other hand, we do not have multiple tests over time that would enable us to say the same for kilns that have a different type of APCD (*e.g.,* DLA) or are uncontrolled. Thus, we are requesting information and analysis as to whether the data showing low emissions from some kilns without a FF-based APCD are reliable.[1]

As of January 1, 2014, there were 225 operating BSCP tunnel kilns in the industry (including kilns at major sources and synthetic area sources); the top 12 percent of the kilns in the industry would be represented by the 27 best performing kilns. Therefore, we ranked the kilns with a FF-based APCD in terms of lb/ton (as described in section IV.E of this preamble) and identified the 27 best performing sources from that group. Once we identified the best performing kilns, we then calculated the MACT floor in units of lb/ton as described in section IV.E of this preamble. We also calculated the MACT floor in concentration units (gr/dscf at 7-percent O_2), based on the concentration emissions data for the same top 12 percent (best performing) sources as the lb/ton floor. As another alternative, we calculated an equivalent lb/hr total non-Hg HAP metals limit using the average non-Hg HAP metals content of the PM emissions and the average process rates of the best performing kilns. This limit would provide additional compliance flexibility for small tunnel kilns and tunnel kilns with a low metals content in the PM emissions. The alternatives are further discussed in section IV.E of this preamble and in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Brick and Structural Clay Products'' in Docket ID No. EPA–HQ–OAR–2013–0291.

E. How did the EPA determine the MACT floors for existing sources?

The EPA must consider available emissions information to determine the MACT floors. The EPA must exercise its judgment, based on an evaluation of the relevant factors and available data, to determine the level of emissions control that has been achieved by the best performing sources under variable conditions. The United States Court of Appeals for the District of Columbia Circuit has recognized that the EPA may consider variability in estimating the degree of emission reduction achieved by best performing sources and in setting MACT floors. *See Mossville Envt'l Action Now* v. *EPA,* 370 F.3d 1232, 1241–42 (D.C. Cir. 2004) (holding EPA may consider emission variability in estimating performance achieved by best performing sources and may set the floor at level that best performing source can expect to meet ''every day and under all operating conditions'').

As discussed in section IV.D of this preamble, the EPA established the MACT floors for PM (as a surrogate for non-Hg HAP metals) for BSCP kilns based on sources representing 12 percent of the number of sources in the category. For Hg emitted from each of the kiln subcategories, the EPA established the MACT floors based on sources representing 12 percent of the sources for which we had emissions information. The MACT floor limitations for Hg and PM (as a surrogate for total non-Hg HAP metals) were calculated based on the performance of the best performing sources in each of the subcategories. The best performing sources were determined by ranking each source's average emission value from lowest to highest.

Once the best performing sources in the MACT floor pools were identified, the MACT floors were calculated using an Upper Prediction Limit (UPL). The UPL takes into consideration the average performance of the units in the MACT floor pool and the variability of the test runs during the testing conditions. For more information regarding the general use of the UPL and why it is appropriate for calculating MACT floors, see the memorandum ''Use of the Upper Prediction Limit for Calculating MACT Floors'' in Docket ID No. EPA–HQ–OAR–2013–0291.

The UPL represents the value which one can expect the mean of a specified number of future observations (*e.g.,* 3-run average) to fall below for the specified level of confidence, based upon the results of an independent sample from the same population. A prediction interval for a future observation or an average of future observations, is an interval that will, with a specified degree of confidence, contain the next (or the average of some other pre-specified number of) randomly selected observation(s) from a population. Given this definition, the UPL represents the value which we can expect the mean of three future observations (3-run average) to fall below, based upon the results of an independent sample from the same population. In other words, if we were to randomly select a future test condition from any of these sources (*i.e.,* average of three runs), we can be 99 percent confident that the reported level will fall at or below the UPL value.

[1] Further, as discussed in section IV.P.1 of this preamble, the EPA is also considering setting emission limits for PM and total non-Hg HAP metals based on the top 12 percent of the data available in each of the kiln size subcategories. The reliability of the data showing low emissions from some kilns without a FF-based APCD is a key factor in the EPA's determination of which approach is appropriate.

There are different UPL equations depending on the distribution of the data (*e.g.,* normal, lognormal, skewed/unknown). We first determined the distribution of each MACT floor pool's data to determine the appropriate UPL equation using statistical tests of the kurtosis (K), standard error of kurtosis (SEK), skewness (S) and standard error of skewness (SES). The skewness statistic (S) characterizes the degree of asymmetry of a given dataset. According to the skewness hypothesis test, if S is less than two times the SES, the data distribution can be considered to be normal. The kurtosis statistic (K) characterizes the degree of peakedness or flatness of a given data distribution in comparison to a normal distribution. According to the kurtosis hypothesis test, if K is less than two times the SEK, the data distribution can be considered to be normal. The skewness and kurtosis hypothesis tests were applied to both the reported test values and the log-transformed values of the reported test values to determine the distribution of each dataset. A UPL was then calculated for each MACT floor pool with the UPL equation corresponding to the dataset's distribution (*e.g.,* normal, lognormal, skewed/unknown).

A more detailed explanation of all the UPL equations used, including the calculations of kurtosis, standard error of kurtosis, skewness and standard error of skewness, can be found in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Brick and Structural Clay Products'' in Docket ID No. EPA–HQ–OAR–2013–0291.

Test method measurement imprecision can also be a component of data variability. Of particular concern are those data that are reported near or below a test method's pollutant detection capability. There is a concern that a floor emissions limit calculated using values at or near the method detection limit may not account adequately for data measurement variability. The expected measurement imprecision for an emissions value occurring at or near the detection limit is about 40 to 50 percent. Relative pollutant measurement imprecision decreases to a consistent 10 to 15 percent for values measured at a level about 3 times the method detection limit.[2]

One approach that we believe could be applied to account for measurement variability would require defining a detection limit that is representative of the data used in establishing the floor emissions limitations and also minimizes the influence of an outlier test-specific method detection limit value. The EPA has developed a list of representative detection levels (RDL) developed from available pollutant specific method detection levels.[3] These RDL values are then multiplied by three to decrease measurement imprecision to around 10 to 15 percent (as noted in the previous paragraph), resulting in values referred to as ''3×RDL'' values.

The appropriate 3×RDL value was compared to the calculated UPL value for each pollutant and subcategory. If the 3×RDL value was less than the calculated UPL value, we concluded that measurement variability is adequately addressed and we used the calculated UPL value as the MACT floor emissions limit. If, on the other hand, the 3×RDL value was greater than the calculated UPL value, we concluded that the calculated UPL value does not account entirely for measurement variability. We then used the 3×RDL value in place of the calculated UPL value to ensure that measurement variability is adequately addressed in the MACT floor emissions limit. This check was part of the variability analysis for all existing MACT floors that had below detection limit (BDL) or detection level limited (DLL) run data present in the best performing datasets (see the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Brick and Structural Clay Products'' in Docket ID No. EPA–HQ–OAR–2013–0291).

As previously discussed, we accounted for variability in setting floors, not only because variability is an element of performance, but because it is reasonable to assess best performance over time. For example, we know that the HAP emission data from the best performing units are, for the most part, short-term averages and that the actual HAP emissions from those sources will vary over time. If we do not account for this variability, we would expect that even the units that perform better than the floor on average could potentially exceed the floor emission levels a part of the time, which would mean that variability was not properly taken into account. This variability may include the day-to-day variability in the total HAP input to each unit; variability of the sampling and analysis methods; and variability resulting from site-to-site differences for the best performing units. The EPA's consideration of variability accounted for that variability exhibited by the data representing multiple units and multiple data values for a given unit (where available). We calculated the MACT floor based on the UPL (upper 99th percentile) as described earlier from the average performance of the best performing units and the variability of the best performing units.

We believe this approach reasonably ensures that the emission limits selected as the MACT floors adequately represent the level of emissions actually achieved by the average of the units in the top 12 percent, considering operational variability of those units. Both the analysis of the measured emissions from units representative of the top 12 percent and the variability analysis are reasonably designed to provide a meaningful estimate of the average performance or central tendency, of the best performing 12 percent of units in a given subcategory. A detailed discussion of the MACT floor methodology is presented in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Brick and Structural Clay Products'' in Docket ID No. EPA–HQ–OAR–2013–0291.

Table 5 of this preamble presents the average emission level of the best performing sources and the existing source MACT floor. For this source category, all the existing source MACT floors are based on the UPL.

[2] American Society of Mechanical Engineers, *Reference Method Accuracy and Precision (ReMAP): Phase 1, Precision of Manual Stack Emission Measurements,* CRTD Vol. 60, February 2001.

[3] ''*Data and procedure for handling below detection level data in analyzing various pollutant emissions databases for MACT and RTR emissions limits.*'' Memorandum from Peter Westlin, SPPD, MPG and Raymond Merrill, AQAD, MTG, to SPPD management and MACT rule writers. December 13, 2011.

TABLE 5—SUMMARY OF MACT FLOOR RESULTS FOR BRICK AND STRUCTURAL CLAY PRODUCTS EXISTING SOURCES [a]

Subcategory	Parameter	Hg [b]	PM [b c]
Large tunnel kilns (≥ 10 tph)	Avg. of best performing sources	1.6 E–05 lb/ton 1.7 E–04 lb/hr 14 μg/dscm.	
	MACT floor	2.2 E–05 lb/ton 2.7 E–04 lb/hr 29 μg/dscm.	
Small tunnel kilns (< 10 tph)	Avg. of best performing sources	1.8 E–04 lb/ton 0.0010 lb/hr 62 μg/dscm.	
	MACT floor	2.0 E–04 lb/ton 0.0011 lb/hr 70 μg/dscm.	
All kilns	Avg. of best performing sources		0.041 lb/ton. 0.011 gr/dscf.
	MACT floor		0.16 lb/ton. 0.040 gr/dscf.

[a] For this source category, all the existing source MACT floors are based on the UPL.
[b] Concentration units are at 7-percent O_2.
[c] PM is a surrogate for non-Hg HAP metals.

F. How did the EPA determine the MACT floors for new sources?

The approach that we used to calculate the MACT floors for new sources is somewhat different from the approach that we used to calculate the MACT floors for existing sources because the statutory standard is different. Although the MACT floors for existing units are intended to reflect the performance achieved by the average of the best performing 12 percent of sources, the MACT floors for new units are meant to reflect the emission control that is achieved in practice by the best controlled similar source. Thus, for existing units, we are concerned about estimating the central tendency of a set of multiple units, whereas for new units, we are concerned about estimating the level of control that is representative of that achieved by a single best performing source. As with the analysis for existing sources, the new source analysis must account for variability.

Similar to the MACT floor process used for existing units, the approach we used for determining the MACT floor for new units was based on available emissions test data. Specifically, we calculated the new source MACT floor for a subcategory of sources by ranking each unit's average emission value within the subcategory from lowest to highest to identify the best performing similar source. The new source MACT floor limits for Hg and PM (as a surrogate for total non-Hg HAP metals) were calculated based on the performance of the best performing source for each pollutant in each of the subcategories.

The MACT floor limits for new sources were calculated using the same UPL formula as was used for existing sources, except the data used were from the best performing source rather than the best performing 12 percent of sources. As previously discussed, we accounted for variability of the best performing source in setting floors, not only because variability is an element of performance, but because it is reasonable to assess best performance over time. We calculated the new source MACT floor based on the UPL (upper 99th percentile) as described earlier from the average performance of the best performing similar source, Student's t-factor and the total variability of the best performing source.

This approach reasonably ensures that the emission limit selected as the MACT floor for new sources adequately represents the average level of control achieved in practice by the best controlled similar source, considering ordinary operational variability. A detailed discussion of the MACT floor methodology is presented in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Brick and Structural Clay Products'' in Docket ID No. EPA–HQ–OAR–2013–0291.

Table 6 of this preamble presents, for each subcategory and pollutant, the average emission level of the best performing similar source and the new source MACT floor. The new source MACT floors are based on the UPL unless otherwise noted.

TABLE 6—SUMMARY OF MACT FLOOR RESULTS FOR BRICK AND STRUCTURAL CLAY PRODUCTS NEW SOURCES [a]

Subcategory	Parameter	Hg [b]	PM [b c]
Large tunnel kilns (≥ 10 tph)	Avg. of top performer	1.5 E–05 lb/ton 1.8 E–04 lb/hr 10 μg/dscm.	
	MACT floor	2.0 E–05 lb/ton 2.4 E–04 lb/hr 13 μg/dscm.	
Small tunnel kilns (< 10 tph)	Avg. of top performer	1.8 E–04 lb/ton 0.0010 lb/hr 62 μg/dscm.	
	MACT floor	2.0 E–04 lb/ton 0.0011 lb/hr 70 μg/dscm.	
All kilns	Avg. of top performer		0.0060 lb/ton. 0.0020 gr/dscf.

TABLE 6—SUMMARY OF MACT FLOOR RESULTS FOR BRICK AND STRUCTURAL CLAY PRODUCTS NEW SOURCES [a]—Continued

Subcategory	Parameter	Hg [b]	PM [b c]
	MACT floor		0.022 lb/ton [d]. 0.0066 gr/dscf [d].

[a] The new source MACT floors are based on the UPL unless otherwise noted.
[b] Concentration units are at 7 percent O_2.
[c] PM is a surrogate for non-Hg HAP metals.
[d] The MACT floor is based on the 3×RDL value.

G. What is our approach for applying the upper prediction limit to limited datasets?

In a recent United States Court of Appeals for the District of Columbia Circuit decision in *National Association of Clean Water Agencies* v. *EPA,* which involved challenges to EPA's MACT standards for sewage sludge incinerators, questions were raised regarding the application of the UPL to limited datasets. We have since addressed these questions, as explained in detail in the memorandum titled, ''Approach for Applying the Upper Prediction Limit to Limited Datasets'' (hereafter referred to as the ''Limited Dataset Memo''), which is available in Docket ID No. EPA–HQ–OAR–2013–0291.

A limited dataset is defined as having less than seven data points. In calculating MACT floor limits based on limited datasets, we considered additional factors as described in the Limited Dataset Memo. We seek comments on the approach described in the Limited Dataset Memo and whether there are other approaches we should consider for such datasets. We also seek comments on the application of this approach for the derivation of MACT limits based on limited datasets in this proposal, which are described in the Limited Dataset Memo.

For the BSCP manufacturing source category, we have limited datasets for the following pollutants and subcategories: Hg for existing and new small tunnel kilns; PM for new tunnel kilns; and Hg for new large tunnel kilns. For each dataset, we performed the steps outlined in the Limited Dataset Memo. See the Limited Dataset Memo for more information.

H. How did the EPA consider beyond-the-floor for existing sources?

As discussed in sections II.A and IV.D of this preamble, the EPA must consider emissions limitations and requirements that are more stringent than the MACT floor (*i.e.,* beyond-the-floor options). When considering beyond-the-floor options, the EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account the associated costs, energy and non-air quality health and environmental impacts.

Once the MACT floor determinations were complete for each subcategory, we considered regulatory options more stringent than the MACT floor level of control (*e.g.,* the performance of technologies that could result in lower emissions) for the different subcategories. We considered requiring all existing sources to meet the new source MACT floors for Hg and PM (as a surrogate for total non-Hg HAP metals) developed as described in section IV.F of this preamble. We analyzed the beyond-the-floor options for Hg and total non-Hg HAP metals separately for existing sources. Our analyses are documented in the technical memorandum, ''Development of Cost and Emission Reduction Impacts for the BSCP NESHAP,'' in Docket ID No. EPA–HQ–OAR–2013–0291.

The beyond-the-floor option for total non-Hg HAP metals is estimated to achieve additional non-Hg HAP metals reductions of 2.86 tpy and cost an additional $22.8 million per year (2011 dollars), for a cost effectiveness of $7,960,000 per ton of total additional non-Hg HAP metals removed. The beyond-the-floor option for Hg is estimated to achieve additional Hg reductions of 0.0625 tpy (125 pounds per year) and cost an additional $9.25 million per year (2011 dollars), for a cost effectiveness of $148,000,000 per ton of total additional Hg removed ($74,000 per pound of additional Hg removed). We have concluded that the incremental costs of additional control beyond the MACT floor emission limits are not reasonable relative to the level of emission reduction achieved for either the Hg or total non-Hg HAP metals beyond-the-floor options. Therefore, we are not proposing beyond-the-floor limits for Hg or total non-Hg HAP metals.

I. How did the EPA consider beyond-the-floor for new sources?

The MACT floor level of control for new tunnel kilns for each pollutant was based on the emission control that is achieved in practice by the best controlled similar source within each of the subcategories. A new kiln would likely need both a FF and ACI system for control of non-Hg HAP metals and Hg to meet the new source MACT floors. When we establish a beyond-the-floor standard, we typically identify control techniques that have the ability to achieve an emissions limit more stringent than the MACT floor. No techniques were identified that would achieve HAP reductions greater than the new source floors for the subcategories. Therefore, the EPA is not proposing a beyond-the-floor limit for new sources in this proposed BSCP manufacturing rule.

J. How did the EPA determine whether to set health-based standards for existing and new sources?

In developing the proposed BSCP manufacturing rule, we considered whether it was appropriate to establish health-based emission standards under CAA section 112(d)(4) for the acid gases HF, HCl and Cl_2. As a general matter, CAA section 112(d) requires MACT standards at least as stringent as the MACT floor to be set for all HAP emitted from major sources. However, CAA section 112(d)(4) provides that for HAP with established health thresholds, the EPA has the discretionary authority to consider such health thresholds when establishing emission standards under CAA section 112(d). This provision is intended to allow the EPA to establish emission standards other than technology-based MACT standards, in cases where an alternative emission standard will still ensure that the health threshold will not be exceeded, with an ample margin of safety. This section discusses the prerequisite for setting a CAA section 112(d)(4) standard, the factors the EPA considered in exercising its discretion to set a CAA section 112(d)(4) standard and how the EPA set the level of the proposed standard.

1. What Are the Prerequisites for Setting a CAA Section 112(d)(4) Standard?

The prerequisites for setting a CAA section 112(d)(4) standard are that the pollutant must have a health threshold and not be carcinogenic.[4] Whether a pollutant has a health threshold is based on certain factors, including evidence and classification of carcinogenic risk and evidence of noncarcinogenic effects: [5]

- The EPA ''presumptively concludes'' that known, probable and possible carcinogens (Group A, B and C pollutants) ''should not be categorized as threshold pollutants.''
- Pollutants for which there is not enough evidence to make a conclusion on carcinogenicity (Group D pollutants) will be evaluated on a case-by-case basis.
- Pollutants classified as non-carcinogens (Group E pollutants) are ''presumptively considered'' to be threshold pollutants.[6]

Health threshold standards may not be set for pollutants that are carcinogenic.[7]

The EPA has exercised its discretionary authority under CAA section 112(d)(4) in a handful of prior actions setting emissions standards for other major source categories, including the emissions standards issued in 2004 for commercial and industrial boilers and process heaters, which were vacated on other grounds by the United States Court of Appeals for the District of Columbia Circuit. In the proposals for both the Pulp and Paper Chemical Recovery Combustion Sources NESHAP, 63 FR at 18765 (April 15, 1998) and Lime Manufacturing NESHAP, 67 FR at 78054 (December 20, 2002), the EPA invoked CAA section 112(d)(4) for HCl emissions for discrete units within the facility. In those proposed actions, the EPA concluded that HCl had an established health threshold (in those cases it was interpreted as the reference concentration for chronic effects or RfC) and was not classified as a human carcinogen. In light of the absence of evidence of carcinogenic risk, the availability of information on noncarcinogenic effects and the limited potential health risk associated with the discrete units being regulated, the EPA concluded that it was within the EPA's discretion to set an emissions standard under CAA section 112(d)(4) for HCl under the circumstances of those actions.

In more recent actions, the EPA noted that HCl was a threshold pollutant, but decided not to propose a health-based emission standard for HCl emissions under CAA section 112(d)(4) for Portland Cement facilities (74 FR at 21154; May 6, 2009) or for Boilers and Process Heaters (75 FR at 32032; June 4, 2010) for other reasons. To date, the EPA has not implemented a NESHAP that applied the provisions of CAA section 112(d)(4) to HF or Cl_2.[8]

Since any emission standard under CAA section 112(d)(4) must consider the established health threshold level, with an ample margin of safety, in this proposed BSCP manufacturing rulemaking the EPA has considered the adverse health effects of the HAP acid gases, HCl, Cl_2 and HF. The standard approach for determining potential hazards of a pollutant has been to use a health benchmark below which effects are not expected to occur. Described below are the health effects and benchmarks for HCl, Cl_2 and HF and the rationale for their designation as threshold pollutants. It is important to note that if exposure levels as proposed by the emissions limits in this proposed BSCP manufacturing rulemaking are achieved, the adverse health effects described below will not be of concern for emissions from these source categories.

Hydrogen chloride is corrosive to the eyes, skin and mucous membranes. Acute inhalation exposure may cause eye, nose and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. The EPA conducted a toxicity assessment of chronic inhalation exposure to HCl and has established an RfC of 20 micrograms per cubic meter ($\mu g/m^3$).[9] An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups [10]) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The EPA RfC for HCl was based on respiratory toxicity observed in animals. An uncertainty factor of 300 was applied to the lowest adverse effect level noted in animals. This assessment did not take into account effects associated with acute exposure.[11] The EPA has not classified HCl for carcinogenicity.

With respect to the potential health effects of HCl, we know the following:

- Chronic exposure to concentrations at or below the RfC is not expected to cause chronic respiratory effects.
- Little research has been conducted on its carcinogenicity. The one occupational study of which we are aware found no evidence of carcinogenicity.
- There is a significant body of scientific literature addressing the health effects of acute exposure to HCl.[12]

Based on this information, the agency believes it is reasonable to classify HCl as a Group D pollutant.[13] Based on the negative carcinogenicity data and on the EPA's knowledge of how HCl reacts in the body and its likely mechanism of action, as discussed above, the agency considers HCl to be a threshold pollutant.

The effects of acute exposure to humans and animals to Cl_2 have been well characterized. Similar to HCl, Cl_2 is

[4] See *Portland Cement NESHAP Final Rule,* 75 FR 54970, 54985 (col. 2–3) (September 9, 2010) (''In order to exercise this discretion [to set health threshold standards under 112(d)(4)], EPA must first conclude that the HAP at issue has an established health threshold . . .'').

[5] See *Pulp and Paper Chemical Recovery Combustion Sources NESHAP Proposed Rule,* 63 FR 18754, 18766/1–18767/1 (April 15, 1998).

[6] The current weight-of-evidence under the 2005 EPA Guidelines for Carcinogen Risk Assessments, which replaced the 1986 cancer guidelines, recommends the following cancer hazard descriptors: ''Carcinogenic to Humans,'' ''Likely to Be Carcinogenic to Humans,'' ''Suggestive Evidence of Carcinogenic Potential,'' ''Inadequate Information to Assess Carcinogenic Potential,'' and ''Not Likely to Be Carcinogenic to Humans'' (which are considered equivalent to the 1986 groups A, B, C, D and E respectively).

[7] See *Pulp and Paper Chemical Recovery Combustion Sources NESHAP Proposed Rule,* 63 FR 18754, 18765/3 (''The EPA presumptively applies section 112(d)(4) only to HAP's that are not carcinogens because Congress clearly intended that carcinogens be considered nonthreshold pollutants'').

[8] The EPA has not classified HF or Cl_2 gas with respect to carcinogenicity. However, at this time the agency is not aware of any data that would suggest either of these HAP are carcinogens.

[9] U.S. Environmental Protection Agency. *Integrated Risk Information System (IRIS).* Hydrogen chloride (CASRN 7647–01–0). 1995. Available at: *http://www.epa.gov/iris/subst/0396.htm.* Accessed on April 11, 2014.

[10] ''Sensitive subgroups'' may refer to particular life stages, such as children or the elderly or to those with particular medical conditions, such as asthmatics.

[11] California EPA considered acute toxicity and established a 1-hour reference exposure level (REL) of 2.1 mg/m^3. An REL is the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration. RELs are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety.

[12] See California Office of Health Hazard Assessment. *Acute Toxicity Summary for Hydrogen Chloride.* Available at: *http://www.oehha.ca.gov/air/hot_spots/2008/AppendixD2_final.pdf#page=112*, EPA, 2008.

[13] See *Health Assessment Document for Chlorine and Hydrogen Chloride, Review Draft;* EPA–600/8–87/041A, August 1994.

a well-known sensory irritant (capable of eliciting sensory irritation) and the most sensitive target for toxicity in humans and animals is the respiratory system. Acute exposures to low levels of Cl_2 (approximately 3 to 40 milligrams per cubic meter (mg/m^3)) have been shown to cause nose, eyes and throat irritation in humans. Acute exposure to high levels (above 40 mg/m^3) of Cl_2 in humans can result in chest pain, vomiting, toxic pneumonitis and pulmonary edema. Chronic (long-term) exposure to Cl_2 gas in workers has resulted in respiratory effects including eye and throat irritation and airflow obstruction. Animal studies have reported decreased body weight gain, eye and nose irritation, non-neoplastic nasal lesions and respiratory epithelial hyperplasia from chronic inhalation exposure to Cl_2. There is no evidence that Cl_2 causes reproductive or developmental effects in animals or humans. A few studies of workers in the chemical industry did not find any evidence that Cl_2 is carcinogenic. The EPA, the International Agency for Research on Cancer (IARC) and the Department of Health and Human Services (DHHS) have not classified Cl_2 gas as to its carcinogenicity.

The human health value for Cl_2 is an Agency for Toxic Substances and Disease Registry (ATSDR) Minimal Risk Level (MRL) of 0.00015 $\mu g/m^3$.[14] The MRL is defined as an estimate of daily human exposure to a substance that is likely to be without an appreciable risk of adverse effects (other than cancer) over a specified duration of exposure.[15] The MRL was based on respiratory toxicity (nasal lesions) observed in a chronic inhalation exposure (1 year) in monkeys. An uncertainty factor of 30 was applied to the MRL to account for uncertainties in extrapolating results from animal to humans and to account for human variability. Since the effects of acute exposure of humans and animals to Cl_2 have been well characterized, the ATSDR toxicity profile for Cl_2 also included acute MRL.

With respect to the potential health effects of Cl_2, we know the following:

- Chronic exposure to concentrations at or below the MRL is not expected to cause chronic respiratory effects.
- The acute effects of Cl_2 have been well characterized in humans.
- Studies of workers in the chemical industry did not find any evidence that Cl_2 is carcinogenic.

Based on the negative carcinogenicity data and on the EPA's knowledge of how Cl_2 reacts in the body and its likely mechanism of action, as discussed above, the agency presumptively considers Cl_2 to be a threshold pollutant.

There is a significant body of scientific literature addressing the health effects of acute exposure to HF.[16] Hydrogen fluoride is a respiratory tract irritant capable of causing severe tissue damage in the respiratory system. Acute (short-term) inhalation exposure to gaseous HF can cause severe respiratory effects in humans, including severe irritation and pulmonary edema. Severe ocular irritation and dermal burns may occur following eye or skin exposure in humans. Because the toxic effects of HF are, to a large extent, based on the fluoride ion rather than the hydrogen ion, it is noteworthy to mention that the major health effect of chronic inhalation exposure to high levels of fluoride is skeletal fluorosis. In skeletal fluorosis, fluoride accumulates in the bone progressively over many years and can cause a variety of symptoms including stiffness and pain in the joints. In severe cases, the bone structure may change and ligaments may calcify, resulting in muscle impairment and pain. Chronic inhalation exposure to HF (with particulate fluorides) in the aluminum industry has been associated with increased risk of asthma. Chronic oral exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental and bone fluorosis. Although the existing toxicological database on fluoride does not provide strong evidence for the consideration of fluoride as an essential element, several organizations consider fluoride an important dietary element for humans. The Institute of Medicine (IOM) has derived adequate intake values ranging from 0.01 to 4 milligrams per day to reduce the occurrence of dental caries.[17] The World Health Organization (WHO) considers fluoride to be ''essential'' because it considered ''resistance to dental caries to be a physiologically important function.''[18] With regard to HF carcinogenic potential, the ATSDR Public Health Statement document states that ''carcinogenicity via inhalation of fluoride is not considered to be likely by most investigators reporting in the existing literature.'' The EPA has not classified HF for carcinogenicity.

The chronic inhalation noncancer human health value the EPA uses for HF is the REL of 0.014 mg/m^3 derived by California EPA (CalEPA).[19] CalEPA defines the REL as a concentration level at (or below) which no adverse health effects are anticipated for specific exposure durations, a concept that is substantially similar to EPA's non-cancer dose-response assessment perspective and we, therefore, use it as an alternate value in the absence of an IRIS RfC.[20] REL are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety. The REL was based on minimal changes in bone density (skeletal fluorosis) in the workplace by Derryberry et al.[21] CalEPA states that major strengths of the key study on which the chronic REL is based is the observation of health effects in a large group of workers exposed over many years and the identification of no observable adverse effect level (NOAEL). The primary uncertainty in the study is the lack of comprehensive health effects examination. Another source of concern is the potential for greater susceptibility of children to the effects of inhaled fluorides, considering the rapid bone growth at early lifestages. This effect applies with particular importance to children's teeth since it has been established that excessive exposure to fluoride during tooth development in infancy and childhood causes dental fluorosis. To account for uncertainties, the CalEPA REL included a factor of 10 for intraspecies differences

[14] Toxicological Profile for Chlorine, Agency for Toxic Substances and Disease Registry (ATSDR) 2010. Available at *http://www.atsdr.cdc.gov/toxprofiles/tp.asp?id=1079&tid=36*.

[15] Inhalation MRLs are used in noncancer assessments when IRIS RfCs are not available because their concept, definition and derivation are philosophically consistent (though not identical) with the basis for EPA's RfCs (*http://www.epa.gov/ttn/atw/nata1999/99pdfs/healtheffectsinfo.pdf*).

[16] California EPA Chronic Toxicity Summary for Fluorides including Hydrogen Fluoride. 2003. Available at *http://www.oehha.org/air/hot_spots/2008/AppendixD3_final.pdf#page=270*.

[17] IOM. 1997. Dietary reference intakes for calcium, phosphorus, magnesium, vitamin Dand fluoride. Washington, DC: Institute of Medicine. National Academy of Sciences. National Academy Press. *www4.nationalacademies.org/iom/iomhome.nsf*.

[18] WHO. 2002. Fluorides. Geneva, Switzerland: World Health Organization. Environmental Health Criteria Number 227. *http://www.inchem.org/pages/ehc.html*.

[19] California EPA Chronic Toxicity Summary for Fluorides including Hydrogen Fluoride. 2003. Available at *http://www.oehha.org/air/hot_spots/2008/AppendixD3_final.pdf#page=270*.

[20] The California Office of Environmental Health Hazard Assessment has developed dose-response assessments for many substances, based both on carcinogenicity and health effects other than cancer. The process for developing these assessments is similar to that used by the EPA to develop IRIS values and incorporates significant external scientific peer review. The EPA may use CalEPA values in the absence of an IRIS value. *http://www.epa.gov/ttn/atw/nata1999/99pdfs/healtheffectsinfo.pdf*.

[21] Derryberry OM, Bartholomew MD, Fleming RBL. 1963. ''Fluoride exposure and worker health.'' *Arch Environ Health* 6:503–514.

(which also accounts for variation in kinetics between children and adults). In addition, the chronic inhalation REL is lower than the oral chronic REL and the California Public Health Guidance for fluoride in drinking water, which are based on lifetime exposure and protective of infants and children. CalEPA also considered the acute toxicity of HF and established a 1-hour REL of 0.24 mg/m^3 based on mild eye and respiratory irritation.

With respect to the potential health effects of HF, we know the following:

- Chronic exposure at or below the REL is not expected to cause adverse effects.
- There is limited/equivocal evidence of the carcinogenic potential of HF. With regard to the carcinogenic potential evidence available, the ATSDR Public Health Statement document on HF states that ''carcinogenicity via inhalation of fluoride is not considered to be likely by most investigators reporting in the existing literature.'' [22]
- There is significant evidence on the health effects of acute exposure to HF allowing for the derivation of an acute health benchmark.

Based on the negative carcinogenicity data and on the EPA's knowledge of how HF reacts in the body and its likely mechanism of action, as discussed above, the agency considers HF to be a threshold pollutant.

2. What factors does the EPA consider in exercising its discretion whether to set a CAA section 112(d)(4) standard?

The EPA may exercise its discretionary authority under CAA section 112(d)(4) only with respect to pollutants with a health threshold. Where there is an established threshold, the EPA interprets CAA section 112(d)(4) to allow it to weigh additional factors, beyond any established health threshold, in making a judgment whether to set a standard for a specific pollutant based on the threshold or instead follow the traditional path of developing a MACT standard after determining a MACT floor. In deciding whether to exercise its discretion for a threshold pollutant for a given source category, the EPA interprets CAA section 112(d)(4) to allow it to take into account factors such as the following:

- The availability of data to set the health-based standard;
- Co-benefits that would be achieved via the MACT standard, such as reductions in emissions of other HAP and/or criteria pollutants;
- The potential impacts on ecosystems of releases of the pollutant; and
- The potential for cumulative adverse health effects due to concurrent exposure to the same HAP or other HAP with similar biological endpoints, from either the same or other source categories, where the concentration of the threshold pollutant emitted from the given source category is below the threshold.

If the EPA does determine that it is appropriate to set a standard based on a health threshold, the agency must develop emission standards that will ensure the public will not be exposed to levels of the pertinent HAP emitted from the source category in question in excess of the health threshold, with an ample margin of safety.

a. Availability of Data To Determine a Standard

In determining whether to set a health-based standard, the EPA considered whether sufficient data for a particular industry are available to determine such a standard. In previous rules, the EPA declined to set a health-based standard, based in part on the unavailability of data to determine a standard.[23] However, for the proposed BSCP manufacturing rule, because of the relatively small number of facilities compared to other rules such as the Boiler MACT proposal, the EPA was able to determine facility-specific information, including tunnel kiln locations and operating characteristics and stack parameters, available for all BSCP facilities to assess the feasibility of health-based standards in this rule. Such information enabled us to conduct the dispersion modeling necessary to establish a health-based emission limit for acid gases.[24] Consequently, we have concluded that we have enough information to determine the health-based emission standards for the acid gases HF, HCl and Cl_2 for the BSCP manufacturing industry. As discussed in further detail below, these limits have been developed to ensure that exposure is below the health threshold for each facility and also ensure that acute exposures will not pose any health concerns.[25]

b. Co-Benefits

We also considered whether setting technology-based MACT standards for HF, HCl and Cl_2 from BSCP plants would result in significant reductions in emissions of other pollutants, most notably sulfur dioxide (SO_2). Although MACT standards may directly address only HAP, not criteria pollutants, Congress did recognize, in the legislative history to CAA section 112(d)(4), that MACT standards would have the collateral benefit of controlling criteria pollutants as well and viewed this as an important benefit of the air toxics program.[26] Therefore, even where the EPA concludes a HAP has a health threshold, the agency may consider such co-benefits as a factor in determining whether to exercise its discretion under CAA section 112(d)(4). The additional nationwide reductions of SO_2 that would be attributable to BSCP MACT standards for acid gases are estimated to be only 4,300 tpy in the third year following promulgation of the proposed BSCP standards. This reduction is substantially lower than the co-benefits from MACT standards for other industries for which the EPA has decided not to set a health-based limit,[27]

[22] Toxicological Profile for Chlorine, Agency for Toxic Substances and Disease Registry (ATSDR) 2010. Available at *http://www.atsdr.cdc.gov/toxprofiles/tp.asp?id=1079&tid=36.*

[23] See *Boiler MACT Proposed Rule,* 75 FR 32006, 32031/3 (June 4, 2010) (''[W]e have concluded that we do not have sufficient information at this time to establish what the health-based emission standards would be for HCl or the other acid gases.'').

[24] For more information, see the technical memorandum, ''Risk Assessment to Determine a Health-Based Emission Limitation for Acid Gases for the Brick and Structural Clay Products Manufacturing Source Category,'' in Docket ID No. EPA–HQ–OAR–2013–0291.

[25] See *Portland Cement NESHAP Final Rule,* 75 FR 54970, 54986/1 (September 9, 2010) (''[W]e currently lack information on the peak short-term emissions of HCl from cement kilns which might allow us to determine whether a chronic health-based emission standard for HCl would ensure that acute exposures will not pose health concerns.'').

[26] *See* S. Rep. No. 101–228, 101st Cong. 1st sess. at 172.

[27] See *Portland Cement NESHAP Final Rule,* 75 FR 54970 (September 9, 2010)—Co-benefits was identified as the ''decisive factor'' in the *Portland Cement NESHAP Final Rule.* 75 FR 54970, 54985/3. There, EPA declined to set a health-based standard for HCl where setting a MACT standard also controlled other HAP and criteria pollutants. Specifically discussed were SO_2 and other HAP gases. See 75 FR at 54984/3 (''The additional reductions of SO_2 alone attributable to the MACT standards for HCl are estimated to be 124,000 tons per year'' and discussing both direct SO_2 effects and effects of SO_2 as a precursor to $PM_{2.5}$) and 75 FR at 54986/1 (''[Other HAP gases (chlorine (Cl_2), hydrogen cyanide (HCN) and hydrogen fluoride (HF))] are also controlled during the process of controlling HCl emissions from cement kilns using a wet scrubber. As such, their health impacts must be taken into account when considering a health-based emission limit for HCl.'' See also *Boiler MACT Final Rule,* 76 FR at 15644/1 (''EPA considered the comments received on this issue and continues to believe that the co-benefits are significant and provide an additional basis for the Administrator to conclude that it is not appropriate to exercise her discretion under section 112(d)(4).'') and *Boiler MACT Proposed Rule,* 75 FR 32006, 32032 (June 4, 2010)—Co-benefits from MACT standard for HCl and PM as surrogate for HAP metals included the reduction of 340,000 tons per year of SO_2 and unspecified reductions of PM, other non-HAP acid gases (hydrogen bromide) and Hg. See also *MATS Proposed Rule,* 76 FR 24976, 25051/1—Co-benefits from MACT standard for HCl and PM as surrogate for HAP metals included the reduction of 2.1 million tons per year of SO_2 and unspecified reductions of PM, other non-HAP acid gases (hydrogen bromide) and Hg.

and it would not be expected to provide a significant public health benefit.

c. Ecosystem Impacts

In addition to potential health impacts, the EPA has evaluated the potential for environmental impacts when considering whether to exercise discretion under CAA section 112(d)(4).[28] The agency applied the environmental risk screen methodology that it uses in the Risk and Technology Program under section 112 of the CAA to evaluate the potential for chronic exposure to acid gases emitted by BSCP facilities to cause phytotoxicity and reduced productivity of plants.

The environmental screen uses air concentrations from the HEM–3 model used in the human health exposure and risk analysis. We take these concentrations and derive an area-weighted average offsite annual ambient air concentration for each pollutant. The area-weighted average concentrations are compared directly to the appropriate ecological benchmarks for a given pollutant by dividing the area-weighted average concentration by the appropriate ecological benchmark. The result is called a hazard quotient (HQ). An HQ greater than 1 indicated that the area-weighted average concentration exceeded the ecological benchmark.

For the section 112(d)(4) evaluation, the EPA assessed the acid gases HCl and HF around each BSCP facility. Although Cl_2 may also be emitted from BSCP facilities, chlorine gas is so reactive that it is not expected to remain in the environment very long after it is released. Chlorine immediately reacts with both organic and inorganic materials that it comes into contact with. Chlorine undergoes direct photolysis in the air and its half-life in the troposphere is on the order of several minutes. Therefore, it was not considered in the environmental risk screening for the BSCP Manufacturing source category.

For HCl, the environmental risk screen indicated that the area-weighted average modeled concentrations of HCl around each facility (*i.e.,* the area-weighted average concentration of all offsite data points in the modeling domain) did not exceed the ecological benchmark. In addition, there was only one facility with a modeled concentration of HCl at an offsite receptor location that exceeded the ecological benchmark and that was at a single receptor.

For HF, the environmental risk screen indicated that the area-weighted average modeled concentrations of HF around each facility (*i.e.,* the area-weighted average concentration of all offsite data points in the modeling domain) did not exceed the ecological benchmarks. There were multiple facilities with modeled concentrations of HF at offsite receptor locations that exceeded the ecological benchmark, but the area over which the value was exceeded was less than one percent of the offsite modeling domain for each facility, indicating that there would not be any significant or widespread environmental effects.

d. Cumulative Effects

The EPA may consider the availability of information on emissions from co-located and nearby sources and consider if it is feasible to determine the potential cumulative health effects from emissions from the sources in the category when combined with other emissions from other sources that are co-located or located nearby. Relevant emissions may include both emissions of the same pollutant and emissions of other pollutants that may cause cumulative effects.

Through the BSCP industry's responses to the 2008 EPA survey and the 2010 EPA survey, we have substantial information on the locations of BSCP plants and the levels of HF, HCl and Cl_2 emitted from those plants. BSCP plants are not commonly co-located with any other type of operations. They are typically located near the source of the raw materials on large tracts of land from which raw materials are extracted. This provides an additional buffer between the BSCP plants and the surrounding area. Because of the relatively low plume heights, maximum risks from the BSCP plants are located close to the facility property line. In trying to define cumulative risks from nearby non-BSCP emissions, the location and emissions associated with other sources not in the BSCP Manufacturing source category are far less certain. While the EPA 2008 survey and EPA 2010 survey data for BSCP facilities have been reviewed by EPA engineers and scientists, the emissions levels and locations of nearby other facilities, such as those in the NEI, have not undergone the same level of detailed review. Thus, a quantitative analysis of nearby emissions may contain significant uncertainty. However, as discussed above, because of the large footprint of BSCP facilities, their rural locations and the BSCP risks being confined to the near plant locations, we do not expect that the combined emissions of HF, HCl or Cl_2 from BSCP facilities and nearby other sources would result in substantial cumulative health and environmental effects.

3. How did the EPA set the level of the standard?

Based on the EPA's findings, including the minimal cumulative health and environmental effects expected from co-located and nearby sources, the minimal co-benefits of setting technology-based MACT standards for acid gases, the minimal ecosystem impacts from setting a health-based standard in place of a MACT standard and the availability of data to determine a health-based standard, the EPA is proposing to exercise its discretion to use CAA section 112(d)(4). This conclusion is consistent with the EPA's prior decisions where we found it appropriate not to exercise the discretion to invoke the authority in CAA section 112(d)(4) for acid gases, because the circumstances in this case differ from those previous considerations. We request comment on the analysis and conclusions regarding setting health-based standards.

Following from the EPA's determination that a health-based standard is appropriate, the standard must be set as follows:

- There must be an ample margin of safety to avoid the health effects on which the threshold is based.
- There must be no observable adverse effect.
- The standard must not allow greater adverse environmental effects than the MACT standard that would otherwise be established.
- A standard must be set; there can be no exclusions from compliance based on a showing that the source's emissions do not pose a health risk.

CAA section 112(d)(4) expressly states that the health-based standard must be set at the threshold level ''with an ample margin of safety.'' In addition, the legislative history of CAA section 112(d)(4) indicates that a health-based emission limit under CAA section 112(d)(4) should be set at the level at which no observable effects occur, with an ample margin of safety.[29] Because the statute requires an ample margin of safety, it would be reasonable to set any CAA section 112(d)(4) emission standard for a pollutant with a health threshold at a level that at least assures that, for the sources in the controlled category or subcategory, persons exposed to emissions of the pollutant would not experience the adverse health effects on which the threshold is

[28] See *Portland Cement NESHAP Final Rule,* 75 FR 54970, 54986/3 (September 9, 2010).

[29] See *Boiler MACT Proposed Rule,* 75 FR 32006, 32030/2 (June 4, 2010), citing S.Rep. 101–228 at 171–72.

based.[30] The legislative history also states that establishing a CAA section 112(d)(4) standard rather than a conventional MACT standard ''shall not result in adverse environmental effects which would otherwise be reduced or eliminated.'' [31]

The EPA's decision to exercise its discretion to use CAA section 112(d)(4) will not be used to exclude sources from compliance. The EPA does not believe that a plain reading of the statute supports the establishment of an approach in which the EPA excludes specific facilities from complying with emissions limits if the facility demonstrates that its emissions do not pose a health risk. While CAA section 112(d)(4) authorizes the EPA to consider the level of the health threshold for pollutants which have an established threshold, that threshold may be considered when establishing emissions standards under CAA section 112(d). Therefore, the EPA must still establish emissions standards under CAA section 112(d) even if it chooses to exercise its discretion to consider an established health threshold.[32]

As part of the development of the proposed standards, we have maintained an inventory of major source facilities, including the size and operating hours of each tunnel kiln and the geographic location and physical attributes (*e.g.,* stack height, diameter, exit gas flow rate) of each tunnel kiln stack. To develop a health-based emission limit, both long-term and short-term inhalation exposure concentrations and health risks from the BSCP manufacturing source category were estimated using the Human Exposure Model (Community and Sector HEM–3 version 1.3.1). The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers of the modeled sources and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The air dispersion model used by the HEM–3 model (AERMOD) is one of the EPA's preferred models for assessing pollutant concentrations from industrial facilities. To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes one year (2011) of hourly surface and upper air observations for 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block internal point locations and populations provides the basis of human exposure calculations.[33] In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by the EPA for HAP and other toxic air pollutants. The chronic and acute values for the acid gases evaluated in this assessment are presented in Tables 7 and 8 of this preamble, respectively. Further information on the development and sources of these benchmarks and the overall modeling approach is presented in the technical memorandum, ''Risk Assessment to Determine a Health-Based Emission Limitation for Acid Gases for the Brick and Structural Clay Products Manufacturing Source Category'' in Docket ID No. EPA–HQ–OAR–2013–0291.

TABLE 7—DOSE-RESPONSE VALUES FOR CHRONIC INHALATION EXPOSURE TO ACID GASES

Pollutant	CAS Number [a]	RfC (mg/m^3)	Source
Hydrogen chloride	7647010	0.02	IRIS.
Hydrogen fluoride	7664393	0.014	CalEPA.
Chlorine	7782505	0.00015	ATSDR.

[a] Chemical Abstract Services identification number. For groups of compounds that lack a CAS number, we have used a surrogate 3-digit identifier corresponding to the group's position on the CAA list of HAP.

TABLE 8—DOSE-RESPONSE VALUES FOR ACUTE INHALATION EXPOSURE TO ACID GASES [a]

Pollutant	CAS No.	AEGL–1 (1-hr) (mg/m^3)	AEGL–2 (1-hr) (mg/m^3)	ERPG–1 (mg/m^3)	ERPG–2 (mg/m^3)	REL
Hydrogen chloride	7647010	2.7	33	4.5	30	2.1
Hydrogen fluoride	7664393	0.82	20	1.6	16	0.24
Chlorine	7782505	1.5	5.8	2.9	8.7	0.21

[a] AEGL = Acute Exposure Guideline Level, ERPG = Emergency Response Planning Guideline.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each acid gas emitted by each source in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. Chronic noncancer health hazards are expressed by comparing a chronic exposure to a reference level as a ratio. The HQ is the estimated exposure divided by a reference level (*e.g.,* the RfC). For a given acid gas, exposures at or below the reference level (HQ less than or equal to 1) are not likely to cause adverse health effects. As exposures increase above the reference level (HQs increasingly greater than 1),

[30] See *Boiler MACT Proposed Rule,* 75 FR 32006, 32031/3 (June 4, 2010).

[31] See *Portland Cement NESHAP Final Rule,* 75 FR 54970, 54985/2 (September 9, 2010), citing S.Rep. 101–228 at 171–72.

[32] See *Boiler MACT Final Rule,* 76 FR 15608, 15643/3–14644/1 (March 21, 2011). See also *MATS Final Rule,* 77 FR 9304, 9406/1 (February 16, 2012) (same point using nearly identical text).

[33] USEPA Human Exposure Model; available at *http://www2.epa.gov/fera/download-human-exposure-model-hem.*

the potential for adverse effects increases. For a typical risk assessment where multiple pollutants are co-emitted, we aggregate noncancer HQs of HAP that act by similar toxic modes of action or (where this information is absent) that affect the same target organ. This process creates, for each target organ, a specific hazard index (TOSHI) defined as the sum of HQs for individual HAP that affect the same organ or organ system. Because we performed HEM–3 model runs for each acid gas individually, we did not aggregate HQ values of different acid gases. Of course, multiple acid gas pollutants are emitted at BSCP facilities, but a 250 tpy level of HCl-equivalent emissions (based on the HEM risks modeling) ensures that a TOSHI of 1 is not exceeded as long as the HCl-equivalent emissions do not exceed 250 tpy. It is important to note that this emission limit is only applicable to the sources in this source category and should not be considered for sources other than those included in this analysis. Equivalent emissions for other acid gases are determined by the ratio of the chronic RfCs to that for HCl, such that the HCl-equivalent emissions for HF are 175 tpy and for Cl_2 are 1.9 tpy.

For the assessment of potential health risks from acute exposures to the acid gases, we performed a screening assessment using conservative assumptions that in combination approximate a worst-case exposure. The acute exposure scenario assumed worst-case meteorology (from one year of local meteorology) and that a person is located downwind at the point of maximum impact during this same worst-case 1-hour period, but no nearer to the source than 100 meters, which is conservative for this industry given our understanding of the locations of these facilities.

Screening for potentially significant acute inhalation exposures also followed the HQ approach. We divided the maximum estimated acute exposure by each available short-term threshold value to develop an array of HQ values relative to the various acute endpoints and thresholds. In general, when none of these HQ values are greater than 1, there is low potential for acute risk. In those cases where HQ values above 1 are seen, additional information is used to determine if there is a potential for significant acute risks. Additional information for facilities in the BSCP manufacturing source category included using aerial imagery of the facilities to determine the maximum offsite 1-hour concentrations.

Because the emissions equivalency was based on chronic dose-response values, the 250 tpy level does not necessarily ensure that acute reference levels will not be exceeded. For the HCl and Cl_2 model runs, there were no facilities with acute screening HQ values exceeding 1. For HF, we estimate that four of the 91 facilities examined had an acute value exceed the REL, with the highest being 2. However, no facility exceeded an HQ (AEGL–1) value for HF. To assure that no source emits more than the 250 tpy HCl-equivalent limit in a single hour, we propose setting the emissions limit at the hourly equivalent of 250 tpy (57 lb/hr of HCl-equivalent emissions).

It is important to note that the above emissions thresholds are developed from back-calculating the emissions that would result in an HQ of 1 at the worst-case facility. Potential risks at other facilities (not the worst-case facility) are predicted to be well below 1.

Because we had site-specific data on the operation of each tunnel kiln, we were able to use dispersion modeling to ensure that (1) the health-based emission limit cited above for BSCP facilities provides an ample margin of safety and (2) persons exposed to emissions of the pollutant would not experience the adverse health effects on which the threshold is based. In addition, as stated previously, the levels of acid gas emissions associated with BSCP kilns, based on results from the EPA's environmental risk screen methodology outlined above, are not expected to have an adverse environmental impact.

Facilities would demonstrate compliance with the health-based emission limit by determining their facility-wide HCl, HF and Cl_2 emissions, calculating the HCl-equivalent emissions for HF and Cl_2 using RfC values and adding the HCl emissions to the HCl-equivalent values to calculate the total HCl-equivalent emissions. An equation to perform this calculation is provided in the proposed BSCP manufacturing rule. For more information on the development of the health-based standard see the technical memorandum ''Risk Assessment to Determine a Health-Based Emissions Limitation for Acid Gases for the Brick and Structural Clay Products Manufacturing Source Category'' in Docket ID No. EPA–HQ–OAR–2013–0291. For more information on the calculation of an HCl-equivalent value, see the technical memorandum ''Development of Cost and Emission Reduction Impacts for the BSCP NESHAP'' in Docket ID No. EPA–HQ–OAR–2013–0291.

K. How did the EPA determine whether to set work practice standards for existing and new sources?

Under CAA section 112(h), the EPA may set work practice standards in place of an emissions standard where it is not feasible to prescribe or enforce an emission standard. The EPA is proposing to conclude that an emissions standard for certain HAP from certain BSCP manufacturing sources is not feasible because the application of measurement methodology to certain sources is not practicable due to technological and economic limitations. Specifically, the EPA is proposing a work practice standard for BSCP periodic kilns in lieu of emission limits for acid gases (HF, HCl and Cl_2), Hg and non-Hg HAP metals. The EPA is also proposing a work practice standard for dioxin/furan emissions from BSCP tunnel kilns in lieu of a dioxin/furan emission limit. The rationale for these work practice standards is discussed in the paragraphs below. We request comment on how the work practice standards were developed and the proposed standards themselves.

1. Periodic Kilns

a. Rationale for Setting Work Practice Standard in Lieu of Emission Standard

Overview. Periodic kilns are batch process units that are used for firing BSCP under a carefully controlled environment. The large majority of BSCP are fired in tunnel kilns, which operate continuously and are much more energy-efficient than periodic kilns when producing BSCP of a uniform type, such as standard building bricks. In contrast, periodic kilns can readily accommodate variations in firing temperature profiles and cycle times to match the requirements of a wide variety of products. As a result, periodic kilns generally are reserved for specialty products and typically are used only when necessary.[34]

In the BSCP industry, periodic kilns are classified as either beehive kilns or shuttle kilns, but all operate generally the same. A batch of unfired bricks or shapes is loaded into the cold kiln, the kiln is sealed and the burners are ignited and controlled to carefully increase the temperature according to a time-temperature profile specific to the products being manufactured. Once firing is complete, the temperature in the kiln is reduced, the burners are extinguished and the fired product is allowed to cool. When the product is at

[34] See the memorandum titled ''Rationale for Establishing Work Practice Standards for Periodic Brick Kilns'' in Docket ID No. EPA–HQ–OAR–2013–0291.

or near ambient temperature, the kiln is opened and the fired products are removed.[35]

Based on responses to the 2008 EPA survey sent to the BSCP industry, periodic kiln cycle times range from 35 to 168 hours per cycle and typically take 48 to 58 hours. These cycle times cover the period beginning when the burners are first ignited and ending when the burners are cut off. It may take an additional 8 to 10 hours for the fired products to cool before they can be removed from the kiln.[36]

Emissions. Based on limited data from the testing of three BSCP periodic kilns using Method 320 (Fourier transform infrared (FTIR) spectroscopy), emissions of HF and HCl begin within the first 5 to 10 hours of the firing cycle and continue throughout the firing cycle. Emissions are highly variable and can experience large spikes at various points throughout the cycle. In addition, it is likely that emissions continue beyond the completion of the firing cycle, as the fired products cool. HF concentrations in the kiln exhaust can still exceed 100 parts per million at the end of the firing cycle.[37]

Testing Periodic Kilns for Emissions of HF and HCl. The conventional compliance test requirement for most emission sources is to test each source for three 1-hour test runs. This requirement is based on the assumptions that the source operates continuously and that emissions are relatively constant. However, there generally are some variations in emissions. For this reason, the source is tested over three separate runs and the results are averaged to generate a number that is representative of typical emissions.[38]

Unlike continuous sources, emissions from BSCP periodic kilns can vary significantly over the course of one cycle. Because of these variations and the fact that emissions begin shortly after the start of the firing cycle and continue beyond the end of the cycle for an undetermined period of time, the conventional compliance test requirement of three 1-hour test runs cannot accurately measure emissions. Instead, the only way to accurately determine the total emissions from a BSCP periodic kiln cycle is to measure the emissions throughout the entire firing cycle and continuing beyond the completion of the cycle until emission levels become negligible. Testing for any less time could result in estimated emissions that are either much higher or much lower than actual emissions, depending on when during the kiln cycle emissions are sampled.[39]

Because of the variations during firing cycles and variations across the tests, sampling a single kiln cycle is not adequate for characterizing periodic kiln emissions, so more than one kiln cycle would have to be tested. Given that BSCP periodic kiln cycle times typically range from 48 to 58 hours, each periodic kiln would need to be tested for more than 100 hours in order to determine an emission rate that is representative of normal operating conditions. Also, because BSCP periodic kilns are used to fire specialty products that may have significantly differently time-temperature profiles, it would be necessary to test the same kiln multiple times to characterize emissions from different types of products.[40]

Test Methods. The standard reference methods for measuring emissions of HF and HCl are EPA Methods 26 and 26A. These methods are reliable and relatively inexpensive. However, if emissions are variable and experience large spikes, as appears to be the case for BSCP periodic kilns, breakthrough of HCl can occur. That is, the testing apparatus reaches its capacity for absorbing HCl and subsequent HCl in the emissions are not captured. It is not known if breakthrough has occurred until a breakthrough analysis is performed after completion of the test. If it is determined that breakthrough has occurred, retesting is necessary. Another disadvantage to using Methods 26 or 26A for testing throughout periodic kiln cycles is the need for additional manpower to operate the sampling trains around the clock and to recover samples.[41]

An alternative to using Method 26 or 26A is to conduct the tests using FTIR according to EPA Method 320. With FTIR, HCl breakthrough is not an issue. In addition, FTIR also provides near real-time emissions data. However, as noted in the following section, the cost for testing by FTIR is expensive, similar to the cost for testing by Methods 26 or 26A throughout an entire cycle.[42]

Emission Test Costs. The cost for testing by FTIR is estimated to be $49,750 (2009 dollars) for a single 50-hour kiln cycle. If it were determined that the variations in emissions from cycle to cycle were significant, it would be necessary to test each kiln for two or more cycles in order to develop a representative emission rate. Testing for a second cycle would double the testing cost to almost $100,000 and testing for a third cycle would triple the cost to almost $150,000 (2009 dollars). In addition to these costs, additional costs would be incurred for testing the kilns for PM emissions, which would have to be tested using a manual test method (*e.g.,* EPA Methods 5 or 17). If testing were extended into the cooling period, the costs would be even higher.[43]

To address the potential economic impact of a requirement to test periodic kilns, we conducted a cost-to-sales assessment. (See the memorandum ''Economic Feasibility of Testing Periodic Brick Kilns'' in Docket ID No. EPA–HQ–OAR–2013–0291.) The conclusion that testing is not economically feasible for most of the kilns is quite clear. Over half of the kilns included in the analysis have estimated cost-to-sales percentages greater than 3 percent. The economic analysis estimates that for the upper end of the closure estimate for the other kilns when the costs are between 3 percent and 5 percent, one-quarter of the firms will close. This possibility of closure makes this level of costs for testing not economically feasible.

Feasibility of Numerical Emission Limits for Periodic Kilns. CAA section 112(h)(1) states that the Administrator may prescribe a work practice standard or other requirements, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. CAA section 112(h)(2)(B) further defines the term ''not feasible'' in this context to apply when ''the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations.''

Because of the technological and economic limitations described above, we conclude that it is not practicable to establish numerical emission limits for BSCP periodic kilns. Demonstrating compliance with a numerical emissions limit for periodic kilns is technologically limited to testing procedures that are economically infeasible for the BSCP industry. Consequently, we are proposing a work practice standard for BSCP periodic kilns under CAA section 112(h).[44]

b. Development of Work Practice Standard

Information provided to the EPA indicates there are six operational

[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*

factors that have a direct bearing on HAP emissions from BSCP periodic kilns: Temperature, firing cycle, product quality, automatic control, combustion control and kiln load/kiln technology.[45] These six operational factors and their impact on HAP emissions are described further in the paragraphs below.

Temperature. Various scientific test methods are used to study the reactions in brick clays during heating. Differential thermal analysis, thermo gravimetric analysis and simultaneous thermal analysis are techniques used to show the oxidation, de-hydroxylation and vitrification reactions, as well as the weight loss characteristics of the material. Knowledge of these reaction characteristics would enable the brick manufacturer to design the kiln firing cycle for the optimization of the product quality and to minimize process losses. Ensuring good product quality and minimizing process losses would eliminate the need for additional production firing cycles to meet the quantities demanded by the market, thereby avoiding the generation of additional HAP emissions.[46]

Firing Cycle. Each periodic firing process in the brick industry is unique and is governed by the nature of the brick clay material being fired. For example, some shale materials have higher carbon and sulfur levels and require a longer ''dwell'' at the oxidation temperature range from 1,600 °F to 1,700 °F, while other clay materials are more refractory in nature and require higher final firing temperatures in order to develop the desired finished color and the physical properties to meet the ASTM standards required by the market. These factors influence the period of time in the oxidation stages, as well as the time required in the final ''soak'' stage of the firing cycle. HAP emissions have also been shown to take place in these stages of the firing cycle.[47] Consequently, knowledge of these factors is key to avoiding any additional emissions during these stages.

Product Quality. The time and temperature relationships previously described affect the ultimate quality and acceptability of the finished product. An ''over-fired'' product would produce excessive shrinkage, color variation and process losses. This type of firing cycle would likely produce higher HAP emissions per ton of ware fired. Similarly, an under-fired product would not meet durability standards required by the ASTM standards and the market. While under-firing the product would produce less HAP emissions, more product would have to be fired to meet production requirements, which would lead to more HAP emissions per sellable ton of ware. Therefore, any work practice standard would need to be a practice that produces the best product quality and the minimum HAP emissions. This optimized work practice would entail developing an optimum firing cycle for each particular brick clay body.[48]

Automatic Control. The design of the kiln firing system influences the brick manufacturers' ability to achieve repeatable, maximum product quality results. Most periodic kiln operators in the brick industry have used modern programmable logic controller (PLC) technology for some time. These systems enable the brick manufacturer to program the kiln firing temperature over a well-established, optimized time cycle, to achieve repeatable results. Modern high-velocity burner technology is commonly employed.[49] Achieving repeatable, maximum product quality results would eliminate the need to fire additional product to meet production requirements, thereby avoiding the generation of additional HAP emissions.

Combustion Control. The use of PLC technology enables the rate of gas delivery to the burner system to be accurately programmed, to ensure that each stage of the firing cycle is accurately controlled and to avoid over-firing or under-firing. The measuring devices that are part of the combustion equipment enable the kiln operator to adjust the air-to-fuel ratios in each stage, to achieve the optimum combustion efficiency needed to produce the desired product. In this way, the production of poor quality, rejects and losses is minimized. Technology that does not achieve this would produce higher losses and poor quality, resulting in additional production firing cycles being required to meet the quantities demanded by the market and additional HAP emissions.[50]

Kiln Load/Kiln Technology. For proper combustion, it is important that the periodic kiln not be overloaded, as overloading could cause improper combustion and lost product, resulting in additional production firing cycles and additional HAP emissions. To ensure proper firing, the following parameters should be addressed:[51]

- Employment of draft controls on exhaust fans to adjust exhaust volume flow.
- Measurement, monitoring and control of kiln pressure by adjustment of kiln exhaust.
- Measurement and monitoring of kiln temperatures.
- Measurement and control of air and fuel flow to the combustion system.

Work Practice Standard. Based on these six operational factors, the following work practice standard is proposed under CAA section 112(h):[52]

- Each facility would have to develop and use a designed firing time and temperature cycle for each product produced in the periodic kiln, by programming the time and temperature cycle into the kiln or by tracking each step on a log sheet.
- Each facility would have to label each periodic kiln with the maximum load (in tons) that can be fired in the kiln during a single firing cycle.
- For each firing load, each facility would have to limit the total tonnage placed in the kiln to no more than the maximum load and document the total tonnage placed in the kiln to show that it is not greater than the maximum load.
- Each facility would have to develop and implement maintenance procedures for each kiln that specify the frequency of inspection and maintenance of the following items:
  - Calibration of temperature measuring devices
  - Controls that regulate air-to-fuel ratios
  - Controls that regulate firing cycles
- Each facility would have to develop and maintain records required for each periodic kiln, including logs to document the proper operation of the periodic kilns and logs of the maintenance procedures used to demonstrate compliance with the standard.

2. Dioxin/Furan Emissions

a. Rationale for Setting Work Practice Standard

The significant majority of measured dioxin/furan emissions from BSCP tunnel kilns are BDL and the EPA considers it impracticable to reliably measure dioxin/furan emissions from these units. (Note: Both dioxin/furan emissions and detection levels are in terms of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) toxic equivalents (TEQ).) The fact that the majority of measurements are so low casts doubt on whether the tests accurately measured the true levels of emissions. The dioxins/furans for each run were compared to one-half the RDL developed for utilities.[53] Overall, 15 out of 18 test runs (83 percent of the entire test run dataset) contained dioxin/furan estimates below one-half of the RDL.

[45] See the memorandum titled ''Work Practice Standards for Periodic Kiln Operations,'' in Docket ID No. EPA–HQ–OAR–2013–0291.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] See the email titled ''Periodic kiln language,'' in the docket for the proposed BSCP rulemaking.

[53] Johnson, S. *Determination of ''non-detect'' from EPA Method 29 (multi-metals) and EPA Method 23 (dioxin/furan) test data when evaluating the setting of MACT floors versus establishing work practice standards.* June 5, 2014.

Based on the difficulties with accurate measurements at the levels of dioxins/furans encountered from tunnel kilns and the economics associated with units trying to apply measurement methodology to test for compliance with numerical limits, we are concluding that application of measurement methodology is not practicable and are proposing to set a work practice standard under CAA section 112(h). We request comment on the rationale for setting work practice standards.

b. Work Practice Standard

The proposed work practice standard described below ensures that equipment is maintained and run so as to minimize emissions of dioxins and furans. The work practice would involve maintaining and inspecting the burners and associated combustion controls (as applicable), tuning the specific burner type to optimize combustion, keeping records of each burner tune-up and submitting a report for each tune-up conducted. Dioxins/furans are products of incomplete combustion (PIC) and optimizing combustion limits the formation of PIC, thereby minimizing emissions of dioxins/furans.

We are proposing that the tune-up must be conducted no less frequently than every 36 calendar months. Initial compliance with the work practice standard of maintaining burners must occur within 180 days of the compliance date of the BSCP manufacturing rule. The initial compliance demonstration for the work practice standard of conducting a tune-up must occur no later than 42 months (36 months plus 180 days) from the effective date of the final BSCP manufacturing rule. We request comment on the proposed work practice standards.

L. How did the EPA develop the startup and shutdown requirements?

As noted in section III.B of this preamble, tunnel kilns typically operate continuously, so startups and shutdowns are infrequent. Startup of a tunnel kiln involves starting up the burners based on a set procedure to raise the temperature of the kiln to the proper operational temperature for manufacturing bricks or structural clay products. Shutdown of a tunnel kiln is the process of cooling the kiln from the proper operational temperature by stopping the burners based on a set procedure. When the temperature of the kiln is below the proper operational temperature, BSCP manufacturers typically do not push new product into the kiln, so the emissions are not expected to be the same during startup and shutdown as during normal operations.

While the kiln is heating to the proper operational temperature during startup or cooling from the operational temperature during shutdown, other parameters such as exhaust flow rate, moisture content, O_2 concentration and pressure are also changing. In addition, the changes in these parameters may not happen smoothly and consistently as startup or shutdown progresses, as the kiln does not heat or cool evenly. The fluctuations in all these parameters are not consistent with the relatively steady-state conditions needed for valid, accurate results over three test runs using the measurement methods proposed to be used to demonstrate compliance.

Even if testing were feasible during startup and shutdown, most of the emission limit formats chosen for this proposed BSCP manufacturing rule are not appropriate for use during periods other than normal operation. For example, if there is no throughout in the kiln, emission limits that are in a mass per throughput format would be essentially meaningless. In addition, the concentration based-standards are corrected to a specified O_2 concentration to avoid the use of dilution air to lower the measured concentration, but during startup and shutdown, the O_2 concentration in the kiln exhaust is likely to fluctuate. This means that even if an owner or operator could conduct an emissions test and measure the O_2 content during startup and shutdown for comparison to the O_2-corrected emission limit, the fluctuations in O_2 content and other parameters in the kiln mean that the O_2-corrected emissions are also fluctuating.

For tunnel kilns with an APCD, venting the kiln exhaust through the APCD at low temperatures can cause operational problems, including moisture in the bags of a baghouse or solidification of the lime in a DIFF. Therefore, the BSCP owners and operators that responded to the SSM portion of the 2010 EPA survey indicated that they bypass the APCD if the kiln exhaust temperature is below a ''low temperature set point.'' Based on information received through the 2010 EPA survey, this kiln exhaust temperature ranges from 284 to 400 °F for startup and from 150 to 300 °F for shutdown. All of the EPA survey respondents indicated that no new product is introduced to the kiln as long as the APCD is bypassed, so that emissions are minimized.

Therefore, we are proposing work practice standards for periods of startup and shutdown for BSCP tunnel kilns with APCD. For startup, the owner or operator would be required to vent the exhaust from the kiln through the APCD by the time the kiln exhaust temperature reaches 400 °F. In addition, no bricks or other product may be introduced to the kiln until the kiln exhaust temperature reaches 400 °F and the exhaust is being vented through the APCD. For shutdown, the owner or operator would be required to vent the exhaust from the kiln through the APCD until the kiln exhaust temperature falls below 300 °F. In addition, no bricks or other product may be put into the kiln once the kiln exhaust temperature falls to 300 °F and the exhaust is no longer being vented through the APCD. When the kiln exhaust is being vented through the APCD, the owner or operator would be required to comply with the applicable continuous compliance requirements described in section III.G of this preamble.

For kilns that can meet the proposed standards without an APCD, there are no concerns about damaging an APCD or procedures for bypassing an APCD. In addition, we did not receive any data through the 2010 EPA survey regarding startup and shutdown of uncontrolled kilns. However, as noted above, we recognize that it is not feasible to conduct emission testing during periods of startup and shutdown. Therefore, we are proposing work practice standards for periods of startup and shutdown for BSCP tunnel kilns without an APCD. For startup, no bricks or other product may be introduced to the kiln until the kiln exhaust temperature reaches 400 °F. For shutdown, no bricks or other product may be put into the kiln once the kiln exhaust temperature falls to 300 °F. When there are bricks in the kiln, the owner or operator would be required to comply with the applicable continuous compliance requirements described in section III.G of this preamble.

M. How did the EPA select the compliance requirements?

We are proposing testing and monitoring requirements that are adequate to assure continuous compliance with the requirements of this proposed BSCP manufacturing rule. These requirements are described in detail in sections III.F and III.G of this preamble. We selected these requirements based upon our determination of the information necessary to ensure that the emission standards are being met and the work practices are being followed and that APCD and equipment are maintained and operated properly. Further, these proposed requirements ensure compliance with this proposed BSCP

manufacturing rule without imposing a significant additional burden for facilities that must implement them.

We are proposing that initial compliance with the emission limits for HF, HCl, Cl_2, PM (or non-Hg HAP metals) and Hg be demonstrated by an initial performance test. The proposed BSCP manufacturing rule would also require 5-year repeat performance tests to ensure, on an ongoing basis, that the APCD is operating properly and that its performance has not deteriorated.

The majority of test methods that this proposed BSCP manufacturing rule would require for the performance stack tests (*e.g.,* EPA Methods 5, 26A and 29) have been required under many other EPA standards. Many of the emissions tests upon which the proposed emission limits are based were conducted using these test methods.

When a performance test is conducted, we are proposing that parameter operating limits be determined during the test. To ensure continuous compliance with the proposed emission limits, the proposed BSCP manufacturing rule would require continuous parameter monitoring of the kilns and APCD and maintaining these parameters within the operating limits established during the performance test. We selected these parameter monitoring requirements because they produce data that will be useful to both the owners or operators and the EPA for ensuring continuous compliance with the emission limits and/or operating limits and because of their reasonable cost and ease of execution.

The APCD monitoring parameters included in the proposed rule were chosen for the types of APCD commonly used in the BSCP industry or anticipated to be used to comply with the proposed emission limits. These parameters include lime injection rate (on a per ton of fired product basis) for DIFF and DLS/FF; pressure drop (or bypass stack damper position) and limestone feeder setting for DLA; pressure drop, pH, liquid flow rate and chemical addition rate (if applicable) for wet scrubbers; and activated carbon flow rate for ACI systems. If applicable for demonstrating compliance with the HF/HCl/Cl_2 standard, the kiln monitoring parameter included in the proposed BSCP manufacturing rule is the kiln process rate. Many of these CPMS are standard features on BSCP tunnel kilns and their associated APCD and have also been used in other standards for similar industries.

In addition to parameter monitoring, the proposed BSCP manufacturing rule also includes a requirement for kilns equipped with a FF (*e.g.,* a DIFF, DLS/FF or stand-alone FF) to either install a BLD system or monitor VE. Similar to the CPMS being proposed, BLD systems have also been used in other standards in similar industries. We have also determined that periodic VE checks are a reasonable alternative to BLD systems for this proposed BSCP manufacturing rule. Periodic VE checks have also been proposed for kilns without an add-on control to demonstrate continuous compliance.

N. How did the EPA determine compliance times for the proposed rule?

Section 112 of the CAA specifies the dates by which affected sources must comply with the emission standards. Under CAA section 112(i)(1), new or reconstructed units must be in compliance with this proposed rule immediately upon startup or the effective date of the final rule, whichever is later. (The final action is expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule is expected to be 60 days after the final rule is published in the **Federal Register**.)

Under CAA section 112(i)(3), existing sources are allowed up to 3 years after the effective date of the rule to comply with the final rule. For this industry, we believe that 3 years for compliance is necessary to allow adequate time to design, install and test any control systems that may need to be retrofitted onto existing kilns, as well as obtain permits for the use of add-on controls.

The compliance date for existing area sources that subsequently become major sources is governed by 40 CFR 63.6(c)(5). We are proposing that such sources have 3 years from the date they become major sources to come into compliance, which is equivalent to the compliance period for existing sources discussed in the previous paragraph. Further, under the current regulations in 40 CFR 63.6(b)(7), where an area source becomes a major source by the addition of equipment or operations that meet the definition of new affected source under this rule, that portion of the existing facility that is a new affected source must be in compliance upon initial startup.

O. How did the EPA determine the required records and reports for the proposed rule?

The owner or operator would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 8 of the proposed BSCP manufacturing rule. We evaluated the General Provisions requirements and included those we determined to be the notification, recordkeeping and reporting necessary to ensure compliance with and effective enforcement of this proposed BSCP manufacturing rule.

We are also proposing that the owner or operator keep records on the firing time and temperature cycle for each periodic kiln, the type of product fired in each batch and the amount of product fired in the periodic kiln, to address the operational factors that impact HAP emissions from periodic kilns and demonstrate compliance with the work practice standard for periodic kilns (discussed further in section IV.K.1 of this preamble).

In addition, we are proposing that the owner or operator keep records and submit a report of each burner tune-up that is conducted to ensure good combustion practice and minimize the formation of dioxins/furans from incomplete combustion, to demonstrate compliance with the dioxin/furan work practice standard for tunnel kilns (discussed further in section IV.K.2 of this preamble).

We are also proposing that the owner or operator keep records and submit a report of each malfunction and the corrective action taken as part of the next semiannual compliance report. The proposed compliance report would provide information on each type of malfunction which occurred during the reporting period and which caused or may have caused an exceedance of an emission limit.

This proposed BSCP manufacturing rule also includes a requirement for electronic reporting of performance test data, which is discussed further in section III.I of this preamble.

We request comment on ways that we could streamline the recordkeeping and reporting requirements of the proposed BSCP manufacturing rule by relying on existing business practices.

P. How does the proposed rule affect permits?

The CAA requires that sources subject to the BSCP manufacturing rule, once finalized, be operated pursuant to a permit issued under an EPA-approved state operating permit program. The operating permit programs are developed under title V of the CAA and the implementing regulations under 40 CFR parts 70 and 71. If the facility is operating in the first 3 years of an operating permit, the owner or operator will need to obtain a revised permit to incorporate the requirements of this BSCP manufacturing rule. If the facility is in the last 2 years of an operating permit, the owner or operator will need to incorporate the requirement of this

BSCP manufacturing rule into the next renewal of the permit.

Q. What are the alternate approaches the EPA is considering?

1. Alternate Non-Hg HAP Metals Standards

As noted in section IV.E of this preamble, the proposed emission limits for total non-Hg HAP metals and PM are based on the best performing 27 kilns with a DIFF or DLS/FF (*i.e.,* 12 percent of the kilns in the industry). Instead of these proposed limits, we are considering an alternate approach of setting emission limits for total non-Hg HAP metals and PM based on MACT floors calculated using the top 12 percent of the data available in each of the kiln size subcategories, similar to the procedure we followed for setting the Hg limits.

The alternate PM limits were calculated using the same procedure as described in section IV.E for Hg. In other words, the kilns were ranked within each subcategory on the basis of their lb/ton PM emissions and the top 12 percent best performing kilns were identified (top 9 large kilns and top 3 small kilns). Both the PM lb/ton limit and the concentration limit for existing sources were calculated based on those top 12 percent. The alternate PM lb/ton limit and the concentration limit for new sources were calculated based on the best performing source in each subcategory.

As discussed in section IV.G of this preamble, the EPA must take considerations when dealing with limited datasets. For the BSCP alternate options, we have limited datasets for the following pollutants and subcategories: PM for new large tunnel kilns and PM for new small tunnel kilns. For each dataset, we performed the steps outlined in the Limited Dataset Memo. See the Limited Dataset Memo for more information.

The alternate total non-Hg HAP metals limit was calculated using a similar methodology as the proposed total non-Hg HAP metals limit. Since the alternate total non-Hg HAP metals limits were calculated based on smaller datasets, we found that there were no small kilns in the top three best performing kilns with both PM and non-Hg HAP metals data and only one large kiln in the top nine best performing kilns with both PM and non-Hg HAP metals data. Therefore, the alternate large kiln total non-Hg HAP metals limit for existing sources was calculated by multiplying the alternate PM lb/ton limit by the throughput and the percentage of non-Hg HAP metals measured in the PM during that test. The alternate small kiln non-Hg HAP metals limit for existing sources was then set equal to the existing source large kiln non-Hg HAP metals limit. For new sources, the best performing unit in the PM new source MACT floor pool did not have any non-Hg HAP metals data. Therefore, the alternate large kiln total non-Hg HAP metals limit for new sources was calculated using the average throughput and the average percentage of non-Hg HAP metals measured during tests for kilns with a FF-based APCD. The alternate small kiln non-Hg HAP metals limit for new sources was then set equal to the new source large kiln non-Hg HAP metals limit.

The alternate emissions limits for existing and new sources are presented in in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Brick and Structural Clay Products'' in Docket ID No. EPA–HQ–OAR–2013–0291. We request comment on the calculation methodology used to generate these alternate limits, which is described in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Brick and Structural Clay Products'' in Docket ID No. EPA–HQ–OAR–2013–0291), as well as comment on whether we should use these limits instead of the limits we are proposing.

2. HAP Metals Work Practice Standard

In the recommendations of the Small Business Advocacy Review (SBAR) Panel, members of the BSCP manufacturing industry discussed whether work practice standards for Hg and non-Hg HAP metals would be more appropriate for BSCP tunnel kilns than emissions limits for these pollutants. BSCP manufacturing industry representatives noted the high percentage of test runs below the respective detection limits in the tests results for each metal as support for this suggestion.

We reviewed the available stack test data for Hg and non-Hg HAP metals from BSCP tunnel kilns to evaluate this suggestion. For Hg, we found that all test runs were actually above the detection limits. For the non-Hg HAP metals, we found that only one of the individual non-Hg HAP metals had a high percentage of test runs below the detection limit. We found a high percentage of test runs above the detection limits for all the other non-Hg HAP metals. For more information on this analysis, please see the technical memorandum ''Determination of ''Non-Detect'' Test Data for the BSCP Proposed Rule'' in Docket ID No. EPA–HQ–OAR–2013–0291.

Because Hg and most of the non-Hg HAP metals are emitted from BSCP kilns in detectable levels, the EPA believes it is technologically practicable to measure these emissions and they do not meet the statutory prerequisite for work practice standards under CAA section 112(h). Consequently, we have declined to propose work practice standards for Hg or non-Hg HAP metals. Although we are not proposing work practices for HAP metals, we are requesting comment on this issue. We are specifically asking for emissions data or any other information relevant to the issue of whether the metals emissions from these sources meet the statutory prerequisite for work practice standards in CAA section 112(h).

3. Emissions Averaging

As part of the EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced, we are also requesting comment in this proposed rule on whether to include emissions averaging as an alternative to the individual MACT floor emission limits in the proposed rule. Specifically, the EPA is requesting comment on whether to consider alternative emissions averaging limits for PM (in units of lb/ton or gr/dscf at 7 percent O_2) and total non-Hg HAP metals (in units of lb/hr) for existing tunnel kilns. Emissions averaging can provide sources the flexibility to comply in the least costly manner while still maintaining regulation that is workable and enforceable. Emissions averaging would not be applicable to new sources and could only be used between existing tunnel kilns in the same size subcategory (large or small) at a particular BSCP facility.

Emissions averaging would allow owners and operators of an affected source to demonstrate that the source complies with the emission limits by averaging the emissions from an individual affected unit that is emitting above the emission limits with other affected units at the same facility that are emitting below the emission limits.

We are requesting comment on whether to include an emissions averaging compliance alternative in which emissions averaging represents an equivalent, more flexible, and less costly alternative to controlling certain emission points to MACT levels. A limited form of averaging could be implemented that would not lessen the stringency of the MACT floor limits and would provide flexibility in compliance, cost and energy savings to owners and

operators. We also recognize that we must ensure that any emissions averaging option can be implemented and enforced, will be clear to sources, and would be no less stringent than unit by unit implementation of the MACT floor limits.

The EPA has concluded that it is permissible under the appropriate circumstances to establish within a NESHAP a unified compliance regimen that permits averaging within an affected source across individual affected units subject to the standard under certain conditions. Averaging across affected units is permitted only if it can be demonstrated that the total quantity of any particular HAP that may be emitted by that portion of a contiguous major source that is subject to the NESHAP will not be greater under the averaging mechanism than it could be if each individual affected unit complied separately with the applicable standard. Under this test, the practical outcome of averaging is equivalent to compliance with the MACT floor limits by each discrete unit, and the statutory requirement that the MACT standard reflect the maximum achievable emissions reductions is, therefore, fully effectuated.

In past rulemakings, the EPA has generally imposed certain limits on the scope and nature of emissions averaging programs. These limits include: (1) No averaging between different types of pollutants, (2) no averaging between sources that are not part of the same affected source, (3) no averaging between individual sources within a single major source if the individual sources are not subject to the same NESHAP, and (4) no averaging between existing sources and new sources.

Any emissions averaging alternative to the proposed rule requirements would fully satisfy each of these criteria. First, emissions averaging would only be permitted between individual sources at a single existing affected source, and would only be permitted between individual sources subject to the Brick and Structural Clay NESHAP. Further, emissions averaging would not be permitted between two or more different affected sources or between two or more sources in different subcategories. Finally, new sources could not use emissions averaging. In addition, any emissions averaging alternative would require each facility that intends to utilize emissions averaging to submit an emissions averaging plan, which provides additional assurance that the necessary criteria will be followed. In such an emissions averaging plan, the facility would include the identification of: (1) All units in the averaging group, (2) the control technology installed, (3) the process parameter that will be monitored, (4) the specific control technology or pollution prevention measure to be used, (5) the test plan for the measurement of the HAP being averaged, and (6) the operating parameters to be monitored for each control device. Upon receipt, the regulatory authority would not be able to approve an emissions averaging plan containing averaging between emissions of different types of pollutants or between sources in different subcategories.

This emissions averaging alternative would also exclude new affected sources from the emissions averaging provision. The EPA believes emissions averaging is not appropriate for new sources because it is most cost effective to integrate state-of-the-art controls into equipment design and to install the technology during construction of new sources. One reason to allow emissions averaging under certain circumstances is to give existing sources flexibility to achieve compliance at diverse points with varying degrees of add-on control already in place in the most cost-effective and technically reasonable fashion. This flexibility is not needed for new sources because they can be designed and constructed with compliance in mind.

With concern about the equivalency of emissions reductions from averaging and non-averaging in mind, we would also include under the emissions averaging provision caps on the current emissions from each of the sources in the averaging group. The emissions for each unit in the averaging group would be capped at the emission level being achieved on the effective date of the final rule. These caps would ensure that emissions do not increase above the emission levels that sources currently are designed, operated, and maintained to achieve. In the absence of performance tests, in documenting these caps, these sources would document the type, design, and operating specification of control devices installed on the effective date of the final rule to ensure that existing controls are not removed or operated less efficiently. By including this provision in this proposed rule, we would further ensure that emissions averaging results in environmental benefits equivalent to or better than without emissions averaging.

In addition, we would plan to include a discount factor of 10 percent that would be applied when emissions averaging is used. This discount factor will further ensure that averaging will be at least as stringent as the MACT floor limits in the absence of averaging. The EPA is soliciting comment on use of a discount factor and whether 10 percent is the appropriate discount factor or whether the appropriate discount factor is somewhere in the range of 5% to 25%. The emissions averaging provision would not apply to individual units if the unit shares a common stack with units in other subcategories, because in that circumstance it is not possible to distinguish the emissions from each individual unit.

The alternative emissions averaging provisions for which we are requesting comment in this proposed rule are based in part on the emissions averaging provisions in the Hazardous Organic NESHAP (HON). The legal basis and rationale for the HON emissions averaging provisions were provided in the preamble to the final HON (59 FR 19425, April 22, 1994).

4. Subcategories Based on Raw Materials

The Clean Air Act authorizes EPA to create subcategories which distinguish among ''classes, types, and sizes of sources.'' Section 112(d)(1). EPA is taking comment on subcategorizing with regard to potential standards for mercury emitted by brick kilns. Were EPA to do so, each subcategory would have its own floor and standard, reflecting performance of the sources within that subcategory.

The EPA may create a subcategory applicable to a single HAP, rather than to all HAP emitted by the source category, if the facts warrant. Normally, any basis for subcategorizing must be related to an effect on emissions, rather than to some difference among sources which does not affect emissions performance. The subcategorization possibility for mercury which we are considering is the mercury concentration of the raw materials in the kiln's clay mine, or geographic location.

The EPA does not have sufficient data to determine if mercury emissions correlate with the mercury content of the clay used as raw material by the kiln. Additionally, EPA does not have data that show to what extent mercury content of clay varies by kiln location (*i.e.,* geographical distinction) or within a given source of clay, and to what extent a source could reduce mercury emissions by using an alternate source of clay with lower mercury content.

If data were available to show that the amount of mercury in the raw materials significantly affected mercury emissions, and that kilns could not reasonably use an alternative source of clay with lower mercury content, kilns

using raw materials with higher mercury content might be considered a different type or class of kiln because their process necessarily requires the use of that higher-mercury raw materials.

However, data are not available to support subcategorization based on the amount of mercury in the raw materials. Such data would need to show a correlation between raw material content and mercury emissions and also need to indicate sharp disparities in raw material mercury content that readily differentiate among types of sources. Additionally, data would also be needed to show that alternate sources of raw materials with lower mercury content are not available or feasible. We are specifically asking for mercury emissions data coupled with raw materials mercury data. We are also asking for information regarding the availability of low mercury clay and the feasibility of using low mercury clay to reduce emissions. EPA realizes that if this data is not currently available, obtaining this data may not be possible within the current schedule to promulgate the final rule. Therefore, EPA requests comment on possible approaches to resolve this issue.

V. Summary of the Proposed Rule for the Clay Ceramics Manufacturing Category

This section summarizes the requirements for the Clay Ceramics Manufacturing source category proposed in today's action. Section VI of this preamble provides our rationale for the proposed requirements.

A. What source category is affected by the proposed rule?

Today's proposed rule for Clay Ceramics Manufacturing applies to clay ceramics manufacturing facilities that are located at or are part of a major source of HAP emissions. The Clay Ceramics Manufacturing source category includes those facilities that manufacture pressed floor tile, pressed wall tile and other pressed tile; or sanitaryware (toilets and sinks).

B. What are the affected sources?

The affected sources, which are the portions of each source in the category for which we are setting standards, are: (1) Each ceramic tile roller kiln; (2) each floor tile press dryer; (3) each ceramic tile spray dryer; (4) each ceramic tile glaze line using glaze spraying; (5) each sanitaryware tunnel kiln; (6) each sanitaryware shuttle kiln; and (7) each sanitaryware glaze spray booth.

The following clay ceramics process units are not subject to the requirements of today's proposed rule: (1) Kilns that are used exclusively for refiring or setting glazes on previously fired products; (2) glaze spray operations that use wet glazes containing less than 0.1 (weight) percent metal HAP (dry basis); (3) wall tile press dryers; and (4) sanitaryware ware dryers. See section VI.A for information on why these sources are not subject to the proposed rule.

C. Does the proposed rule apply to me?

This proposed Clay Ceramics manufacturing rule applies to owners or operators of an affected source at a major source meeting the requirements discussed previously in this preamble. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 10 tpy or more of any HAP or 25 tpy or more of any combination of HAP.

D. What emission limitations and work practice standards must I meet?

1. Emission Limitations

We are proposing emission limits for PM as a surrogate for total non-Hg HAP metals for all new and existing ceramic tile roller kilns, sanitaryware tunnel kilns and ceramic tile and sanitaryware glazing operations. We are proposing emission limits for Hg for all new and existing ceramic tile roller kilns, ceramic tile glaze lines and sanitaryware tunnel kilns. We are proposing emission limits for dioxin/furan for all new and existing ceramic tile roller kilns, sanitaryware tunnel kilns, floor tile press dryers and ceramic tile spray dryers. We are also proposing an emission limit for HCl-equivalent for all existing and new roller and tunnel kilns at each facility to reduce the acid gases HF and HCl. The proposed emission limits are presented in Table 9 of this preamble.

TABLE 9—PROPOSED EMISSION LIMITS FOR CLAY CERAMICS SOURCES

Subcategory	Acid gases (lb/hr HCl-equivalent) [a]	Hg (lb/ton)	PM [b] (lb/ton)	Dioxins/furans (ng/dscm at 7 percent O_2) [c]
Limits for existing sources				
Floor tile roller kilns	140	1.3 E–04	0.18	4.6
Floor tile press dryers				0.19
Floor tile spray dryers				44
Wall tile roller kilns	140	2.0 E–04	0.20	0.17
Wall tile spray dryers				0.12
Tile glaze lines		1.6 E–04	1.9	
First-fire sanitaryware tunnel kilns	140	1.2 E–04	0.33	1.5
Sanitaryware manual glaze application			33	
Sanitaryware spray machine glaze application			12	
Sanitaryware robot glaze application			8.8	
Limits for new sources				
Floor tile roller kilns	140	3.9 E–05	0.027	1.5
Floor tile press dryers				0.19
Floor tile spray dryers				0.17
Wall tile roller kilns	140	2.0 E–04	0.20	0.17
Wall tile spray dryers				0.12
Tile glaze lines		1.6 E–04	0.61	
First-fire sanitaryware tunnel kilns	140	1.2 E–04	0.095	0.37
Sanitaryware manual glaze application			3.8	
Sanitaryware spray machine glaze application			3.2	

TABLE 9—PROPOSED EMISSION LIMITS FOR CLAY CERAMICS SOURCES—Continued

Subcategory	Acid gases (lb/hr HCl-equivalent) [a]	Hg (lb/ton)	PM [b] (lb/ton)	Dioxins/furans (ng/dscm at 7 percent O_2) [c]
Sanitaryware robot glaze application	.....	.....	2.2	

[a] Limit applies to all kilns at facility.
[b] PM is a surrogate for non-Hg HAP metals.
[c] ng/dscm = nanograms per dry standard cubic meter.

2. Work Practice Standards

We are proposing work practice standards in lieu of emission limits for acid gases (HF and HCl), Hg and non-Hg HAP metals for sanitaryware shuttle kilns. The work practice standards would require using natural gas (or equivalent) as kiln fuel except during periods of natural gas curtailment or supply interruption; developing and using a designed firing time and temperature cycle for each product produced in the shuttle kiln; labeling each shuttle kiln with the maximum load (in tons) that can be fired in the kiln during a single firing cycle; documenting the total tonnage placed in the kiln for each load to ensure that it is not greater than the maximum load; developing and implementing maintenance procedures for each kiln that specify the frequency of inspection and maintenance; and developing and maintaining records for each shuttle kiln, including logs to document the proper operation and maintenance procedures of the shuttle kilns.

E. What are the startup and shutdown requirements?

The EPA's position on SSM events is discussed in section II.B of this preamble. Standards for periods of startup and shutdown are discussed in this section.

We are proposing work practice standards for periods of startup and shutdown for ceramic tile roller kilns, floor tile press dryers, ceramic tile spray dryers and sanitaryware tunnel kilns with APCD. For startup, the owner or operator would be required to vent the exhaust from the kiln through the APCD by the time the kiln exhaust temperature reaches 40 °F. In addition, no ceramics or other product may be introduced to the kiln until the kiln exhaust temperature reaches 40 °F and the exhaust is being vented through the APCD. For shutdown, the owner or operator would be required to vent the exhaust from the kiln through the APCD until the kiln exhaust temperature falls below 300 °F. In addition, no ceramics or other product may be introduced to the kiln once the kiln exhaust temperature falls to 300 °F and the exhaust is no longer being vented through the APCD. When the kiln exhaust is being vented through the APCD, the owner or operator would be required to comply with the applicable continuous compliance requirements described in section V.G of this preamble.

We are also proposing work practice standards for periods of startup and shutdown for ceramic tile roller kilns, floor tile press dryers, ceramic tile spray dryers and sanitaryware tunnel kilns without an APCD. For startup, no ceramics or other product may be introduced to the kiln or dryer until the kiln or dryer exhaust temperature reaches 400 °F. For shutdown, no ceramics or other product may be introduced to the kiln or dryer once the kiln or dryer exhaust temperature falls to 300 °F. When there are ceramics in the kiln or dryer, the owner or operator would be expected to demonstrate compliance with the emissions limitations (as described in section V.G of this preamble).

We are not proposing alternate standards for periods of startup and shutdown for ceramic tile glaze lines or sanitaryware glaze spray booths. These sources would be expected to demonstrate compliance with the emissions limitations (as described in section V.G of this preamble) at all times when the source is operating, including periods of startup and shutdown.

F. What are the testing and initial compliance requirements?

We are proposing that owners or operators of all affected sources subject to emission limits conduct an initial performance test using specified EPA test methods to demonstrate initial compliance with all applicable emission limits. A performance test would need to be conducted before renewing the facility's 40 CFR part 70 operating permit or at least every 5 years following the initial performance test, as well as when an operating limit parameter value is being revised.

Under today's proposed Clay Ceramics manufacturing rule, the owner or operator would need to measure emissions of HF, HCl, Hg, PM (as a surrogate for non-Hg HAP metals) and dioxins/furans. The owner or operator would measure HF and HCl from ceramic tile roller kilns and sanitaryware first-fire tunnel kilns using one of the following methods:

- EPA Method 26A, ''Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources-Isokinetic Method,'' 40 CFR part 60, appendix A–8;
- EPA Method 26, ''Determination of Hydrogen Chloride Emissions from Stationary Sources,'' 40 CFR part 60, appendix A–8, when no acid particulate (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present;
- EPA Method 320, ''Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR'' 40 CFR part 63, appendix A, provided the test follows the analyte spiking procedures of section 13 of Method 320, unless the owner or operator can demonstrate that the complete spiking procedure has been conducted at a similar source; or
- Any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the General Provisions.

Following the performance test, the owner or operator would calculate the HCl-equivalent for the kiln using proposed Equation 4 in 40 CFR 63.8595(f)(4)(i). If there are multiple kilns at a facility, the owner or operator would sum the HCl-equivalent for each kiln using proposed Equation 5 in 40 CFR 63.8595(f)(4)(ii) to get the total facility HCl-equivalent and compare this value to the proposed limitation.

We are proposing that the owner or operator measure PM emissions from ceramic tile roller kilns and sanitaryware first-fire tunnel kilns using one of the following methods:

- EPA Method 5, ''Determination of Particulate Emissions from Stationary Sources,'' 40 CFR part 60, appendix A–3;
- EPA Method 29, ''Determination of Metals Emissions From Stationary Sources,'' 40 CFR part 60, appendix A–8, where the test results would report the weight of the PM on the filter as PM filterable; or
- Any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the General Provisions.

Method 29 or any other approved alternative method may also be used to measure Hg emissions from ceramic tile

roller kilns, ceramic tile glaze lines and sanitaryware first-fire tunnel kilns.

We are proposing that the owner or operator measure PM emissions from ceramic tile and sanitaryware glaze spray booths using EPA Method 5 or any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the General Provisions.

We are also proposing that the owner or operator measure dioxin/furan emissions from ceramic tile roller kilns and spray dryers, floor tile press dryers and sanitaryware first-fire tunnel kilns using EPA Method 23, ''Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans From Stationary Sources,'' 40 CFR part 60, appendix A–7 or any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the General Provisions.

The following paragraphs discuss the initial compliance requirements that are being proposed. Prior to the initial performance test, the owner or operator would need to install the CPMS equipment to be used to demonstrate continuous compliance with the operating limits. During the initial test, the owner or operator would use the CPMS to establish site-specific operating parameter values that represent the operating limits.

For a DIFF or DLS/FF, we are proposing that the owner or operator ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the HF/HCl performance test and record the feeder setting (on a per ton of fired product basis) for the three test runs. If the lime feed rate varies, the owner or operator would be required to determine the average feed rate from the three test runs. The average of the three test runs establishes the minimum site-specific feed rate operating limit. If there are different average feed rate values during the PM and HF/HCl tests, the highest of the average values becomes the site-specific operating limit. If a BLD system is present, the owner or operator would need to submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for BLD systems.

For a stand-alone FF (*i.e.,* no dry sorbent injection or DLS) and a BLD system, we are proposing that the owner or operator submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for BLD systems.

For a wet scrubber, we are proposing that the owner or operator continuously measure the scrubber pressure drop during the PM performance test, the scrubber liquid pH and the chemical addition rate (if applicable) during the HF/HCl performance test and the scrubber liquid flow rate during both the PM and HF/HCl performance tests. For each wet scrubber parameter, the owner or operator would need to determine and record the average values for the three test runs and the 3-hour block average value. The average of the three test runs establishes the minimum site-specific pressure drop, liquid pH, liquid flow rate and chemical addition rate operating limits. If different average wet scrubber liquid flow rate values are measured during the PM and HF/HCl tests, the highest of the average values become the site-specific operating limits.

For an ACI system, we are proposing that the owner or operator measure the activated carbon flow rate during the Hg and dioxin/furan performance tests and determine the 3-hour block average flow rate. The average of the three test runs establishes the minimum site-specific activated carbon flow rate operating limit. If different average activated carbon flow rate values are measured during the Hg and dioxin/furan tests, the highest of the average values becomes the site-specific operating limit.

If the owner or operator intends to comply with the dioxin/furan emission limit without an ACI system, we are proposing that the owner or operator measure the operating temperature of the process (tunnel or roller kiln, ceramic tile spray dryer, floor tile press dryer) during the dioxin/furan performance test and determine the 3-hour block average operating temperature. The average of the three test runs establishes the site-specific operating limit.

For sources with no APCD installed, we are proposing that the owner or operator calculate the maximum potential HCl-equivalent using proposed Equation 6 in 40 CFR 63.8595(g)(1)(i). The owner or operator would use the results from the performance test to determine the emissions at the maximum possible process rate. For example, if the design capacity of the tunnel or roller kiln is 10 tph and the production rate during the performance test was 9 tph, then the test results represent 90 percent of the maximum potential emissions. If there are multiple kilns at a facility, the owner or operator would need to sum the maximum potential HCl-equivalent for each kiln to get the total facility maximum potential HCl-equivalent and compare this value to the proposed health-based emission limitation for acid gases. If the total facility maximum potential HCl-equivalent is greater than the proposed limitation, we are proposing that the owner or operator determine the maximum process rate for which the total facility maximum potential HCl-equivalent remains at or below the proposed limitation. If there are multiple kilns, the owner or operator would need to determine one or more combinations of maximum process rates that would result in a total facility maximum potential HCl-equivalent that remains at or below the proposed limitation. The maximum process rate(s) would become the operating limit(s) for process rate. We are also proposing that the owner or operator measure the operating temperature of a source during the dioxin/furan performance test and determine the 3-hour block average operating temperature. The average of the three test runs establishes the site-specific operating limit for temperature.

G. What are the continuous compliance requirements?

Today's Clay Ceramics manufacturing rule proposes that the owner or operator demonstrate continuous compliance with each emission limitation that applies. The owner or operator would have to follow the requirements in the OM&M plan and document conformance with the OM&M plan. The owner or operator would need to operate a CPMS to monitor the operating parameters established during the initial performance test as described in the following paragraphs. The CPMS would have to collect data at least every 15 minutes, including at least three of four equally spaced data values (or at least 75 percent if there are more than four data values per hour) per hour to have a valid hour of data. The owner or operator would have to operate the CPMS at all times when the process is operating. The owner or operator would also have to conduct proper maintenance of the CPMS, including inspections, calibrations and validation checks, and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the recorded readings, the owner or operator would need to calculate and record the 3-hour block average values of each operating parameter. To calculate the average for each 3-hour averaging period, the owner or operator would need to have at least 75 percent of the recorded readings for that period.

For a DIFF or DLS/FF, we are proposing that the owner or operator demonstrate compliance with the acid gas (HF/HCl) health-based emission limit by maintaining free-flowing lime

in the feed hopper or silo and to the APCD at all times. If lime is found not to be free flowing via the output of a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system or other system, the owner or operator would have to promptly initiate and complete corrective actions according to the OM&M plan. The owner or operator would also have to maintain the feeder setting (on a per ton of fired product basis) at or above the level established during the performance test and record the feeder setting once each shift.

For a DIFF or DLS/FF, the proposed rule would provide the option to use either a BLD system or VE monitoring to demonstrate compliance with the PM emission limit.

For the option of a BLD system, we are proposing that the owner or operator initiate corrective action within 1 hour of a BLD system alarm and complete corrective actions according to the OM&M plan. The owner or operator would also need to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period. In calculating this operating time fraction, if inspection of the FF demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm must be counted as a minimum of 1 hour and if corrective action is initiated more than 1 hour after an alarm, the alarm time must be counted as the actual amount of time taken to initiate corrective action.

For the option of monitoring VE, we are proposing that the owner or operator perform daily, 15-minute VE observations in accordance with the procedures of EPA Method 22, ''Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares,'' 40 CFR part 60, appendix A–7. During the VE observations, the source would need to be operating under normal conditions. If VE are observed, the owner or operator would have to promptly initiate and complete corrective actions according to the OM&M plan. If no VE are observed in 30 consecutive daily EPA Method 22 tests, the owner or operator may decrease the frequency of EPA Method 22 testing from daily to weekly for that source. If VE are observed during any weekly test, the owner or operator would have to promptly initiate and complete corrective actions according to the OM&M plan and the owner or operator would need to resume EPA Method 22 testing of that source on a daily basis until no VE are observed in 30 consecutive daily tests, at which time the owner or operator may again decrease the frequency of EPA Method 22 testing to a weekly basis.

For a stand-alone FF, we are proposing that the owner or operator use a BLD system or monitor VE as described above to demonstrate compliance with the applicable emission limit.

For a wet scrubber, we are proposing that the owner or operator continuously maintain the 3-hour block averages for scrubber pressure drop, scrubber liquid pH, scrubber liquid flow rate and chemical addition rate (if applicable) at or above the minimum values established during the applicable performance test. Maintaining the 3-hour block average for scrubber pressure drop at or above the minimum value established during the PM performance test would demonstrate compliance with the PM emission limit. Maintaining the 3-hour block average for scrubber liquid pH and chemical (*e.g.,* lime, caustic) addition rate at or above the minimum values established during the HF/HCl performance test would demonstrate compliance with the acid gas (HF/HCl) health-based emission limit. Maintaining the 3-hour block average for scrubber liquid flow rate at or above the lowest minimum value established during the PM and HF/HCl performance tests would demonstrate compliance with all applicable emission limits by showing that the scrubber is in proper working order.

For an ACI system, we are proposing that the owner or operator demonstrate compliance with the Hg and dioxin/furan emission limits by continuously monitoring the activated carbon flow rate and maintaining it at or above the lowest minimum value established during the Hg and dioxin/furan performance tests.

If the owner or operator intends to comply with the dioxin/furan emission limit without an ACI system, we are proposing that the owner or operator demonstrate compliance by continuously monitoring the operating temperature of the process (tunnel or roller kiln, ceramic tile spray dryer, floor tile press dryer) and maintaining it at or above the average operating temperature during the dioxin/furan performance test for the tunnel or roller kiln and ceramic tile spray dryer and at or below the average operating temperature during the dioxin/furan performance test for the floor tile press dryer.

For a water curtain on a spray glazing operation, we are proposing that the owner or operator demonstrate compliance with the PM emission limit by conducting a daily inspection to verify the presence of water flow to the wet control system, conducting weekly visual inspections of the system ductwork and control equipment for leaks and conducting annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment.

For baffles on a spray glazing operation, we are proposing that the owner or operator demonstrate compliance with the PM emission limit by conducting an annual visual inspection of the baffles to confirm the baffles are in place.

For a source with no APCD, we are proposing that, to demonstrate compliance with the PM emission limit, the owner or operator monitor VE as described above; and, to demonstrate compliance with the dioxin/furan emission limit, the owner or operator continuously monitor the operating temperature, determine and record 3-hour block averages and maintain the 3-hour block averages at or above the average operating temperature during the dioxin/furan performance test for the tunnel or roller kiln and ceramic tile spray dryer and at or below the average operating temperature during the dioxin/furan performance test for the floor tile press dryer. In addition, if the last calculated total facility maximum potential HCl-equivalent was not at or below the proposed health-based emission limitation for acid gases, then we are proposing that the owner or operator collect and record data documenting the process rate of the tunnel or roller kiln and reduce the data to 3-hour block averages. The owner or operator would need to maintain the kiln process rate(s) at or below the kiln process rate operating limit(s) that would enable the total facility maximum potential HCl-equivalent to remain at or below the proposed limitation.

H. What are the notification, recordkeeping and reporting requirements?

All new and existing sources would be required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 9 of subpart KKKKK. The General Provisions include specific requirements for notifications, recordkeeping and reporting.

Each owner or operator would be required to submit a notification of compliance status report, as required by 40 CFR 63.9(h) of the General Provisions. This proposed Clay Ceramics manufacturing rule would

require the owner or operator to include in the notification of compliance status report certifications of compliance with rule requirements. Semiannual compliance reports, as required by 40 CFR 63.10(e)(3) of subpart A, would also be required for each semiannual reporting period.

This proposed Clay Ceramics manufacturing rule would require records to demonstrate compliance with each emission limit and work practice standard. These recordkeeping requirements are specified directly in the General Provisions to 40 CFR part 63 and are identified in Table 9 of subpart KKKKK.

Specifically, we are proposing that the owner or operator must keep the following records:

- All reports and notifications submitted to comply with this proposed Clay Ceramics manufacturing rule.
- Records of performance tests.
- Records relating to APCD maintenance and documentation of approved routine control device maintenance exemption.
- Continuous monitoring data as required in this proposed Clay Ceramics manufacturing rule.
- Records of BLD system alarms and corrective actions taken.
- Each instance in which the owner or operator did not meet each emission limit (*i.e.,* deviations from operating limits).
- Records of production rates.
- Records of approved alternative monitoring or testing procedures.
- Records of maintenance and inspections performed on the APCD.
- Current copies of the OM&M plan and records documenting conformance.
- Logs of the information required to document compliance with the shuttle kiln work practice standard.
- Logs of the information required to document compliance with the startup and shutdown work practice standards.
- Records of each malfunction and the corrective action taken.

We are also proposing to require that the owner or operator submit the following reports and notifications:

- Notifications required by the General Provisions.
- Initial Notification no later than 120 calendar days after the affected source becomes subject to this subpart.
- Notification of Intent to conduct performance tests and/or other compliance demonstration at least 60 calendar days before the performance test and/or other compliance demonstration is scheduled.
- Notification of Compliance Status 60 calendar days following completion of a compliance demonstration that includes a performance test.
- Notification of Compliance Status 30 calendar days following completion of a compliance demonstration that does not include a performance test (*i.e.,* compliance demonstration for the work practice standard).
- Compliance reports semi-annually, including a report of each malfunction resulting in an exceedance and the corrective action taken.
- Report of alternative fuel use within 10 working days after terminating use of the alternative fuel.
- Results of each performance test within 60 days of completing the test, submitted to the EPA by direct computer-to-computer electronic transfer via EPA-provided software for data collected using supported test methods.

I. How would I submit emissions test results to the EPA?

The ERT provisions being proposed for clay ceramics manufacturing are the same as those being proposed for BSCP manufacturing. The ERT provisions for BSCP manufacturing are discussed in section III.I of this preamble.

VI. Rationale for the Proposed Rule for Clay Ceramics Manufacturing

A. How did the EPA determine which sources would be regulated under the proposed rule?

Based on our review of the available information on the clay ceramics manufacturing industry, we determined that there are three distinct sectors within the industry: (1) Ceramic floor tile; (2) ceramic wall tile; and (3) sanitaryware. Specifically, we found that the ceramic floor tile, ceramic wall tile and sanitaryware sectors of the industry differ in terms of raw materials, processes and final products.

The primary raw materials used for manufacturing sanitaryware are ball clay, other clays, feldspar and silica, whereas ceramic tile is made primarily from ball clay, talc, nepheline syenite (an igneous rock comprised of nepheline, microcline and albite), fire clay and shale. However, while the raw materials are similar for ceramic floor and wall tile, the mix for ceramic wall tile includes more talc and less ball clay, resulting in a lighter-weight mix. Regarding processes, ceramic floor tile facilities use spray dryers to process the ceramic mix into a powder to allow tile pressing, followed by press dryers to press the tiles. The tile is then glazed prior to firing in a roller kiln. Ceramic wall tile facilities also use spray and press dryers, but they are designed, managed and operated to handle the lighter weight raw material mix. Ceramic wall tile is produced in a two-step firing process using roller kilns and it is glazed in between firings. On the other hand, sanitaryware facilities use tunnel kilns to fire the ceramic ware and they glaze the ware before firing, predominantly using glaze spraying.

Ceramic floor tile, ceramic wall tile and sanitaryware also have different characteristics as finished products and compete in different markets. Ceramic floor tile is defined as a vitreous product with a low water absorption rate. Floor tile is known for its multi-color, variably-textured, and slip-resistant characteristics, which are not acceptable in most wall tiles. Ceramic wall tile is defined as a non-vitreous product required to meet a water absorption rate of 7 to 20 percent, much higher than that required for floor tile. Wall tile has much more stringent appearance requirements compared to floor tile, with the market demanding that most wall tile be mono-color, with a high gloss or smooth matte finish (requiring a two-step firing process). Sanitaryware is vitreous ceramic ware of zero or low absorption after firing that is used for plumbing and bathroom fixtures and accessories (such as toilets and ceramic sinks).

In the clay ceramics manufacturing industry, the foremost sources of HAP emissions are first-fire tunnel and periodic (shuttle) kilns at sanitaryware facilities and roller kilns at ceramic tile facilities. Based on emissions testing, the HAP emitted from first-fire tunnel kilns and roller kilns include HF, HCl, Hg, other non-Hg HAP metals and dioxins/furans. Shuttle kilns are also assumed to emit these pollutants based on similarities in raw materials used in shuttle kilns and first-fire tunnel kilns. Other sources of HAP emissions at clay ceramics manufacturing facilities are glaze lines that employ glaze spraying at ceramic tile facilities, glaze spray booths at sanitaryware facilities, spray dryers at ceramic tile facilities and press dryers at floor tile facilities. The HAP emitted from ceramic tile glaze lines include Hg and non-Hg HAP metals, the HAP emitted from sanitaryware glazing operations include non-Hg HAP metals and the HAP emitted from ceramic tile spray dryers and press dryers are dioxins/furans. Other process units at clay ceramics facilities (*e.g.,* raw material processing and handling, wall tile press dryers and sanitaryware ware dryers) have not been found to emit measurable quantities of HAP.[54] For this reason, the proposed Clay Ceramics manufacturing rule covers those existing and new first-fire kilns, glaze spray operations, spray dryers and press dryers at major source clay ceramics manufacturing facilities that emit HAP and meet the applicability criteria.

Additional clay ceramics process units that do not meet the applicability

[54] As part of the 2010 EPA survey, wall tile press dryers and sanitaryware ware dryers were tested for dioxins/furans, but none of the tests found detectable levels of dioxins/furans.

criteria include (1) kilns that are used exclusively for refiring or setting glazes on previously fired products; (2) glaze spray operations that use wet glazes containing less than 0.1 (weight) percent metal HAP (dry basis); and (3) glazing operations using a flow (curtain) coating or waterfall method.

Re-fire kilns are used for firing products that have already been fired but have minor defects, which are subsequently repaired. Nearly all of the emissions from the firing of a clay body (*i.e.,* fluorides, chlorides) are released during the initial vitrification step conducted in first-fire kilns, while re-fire ware has already been vitrified and emits little to no fluorides or chlorides. Kilns that are used exclusively for setting glazes on previously fired products also emit little to no HF or HCl for similar reasons. Glaze spray operations using glaze containing less than 0.1 (weight) percent metal HAP are expected to be an insignificant source of HAP emissions. Glaze applied using a flow (curtain) coating or waterfall method rather than using an aerosol spraying method would have little to no air emissions of non-Hg HAP metals.

B. How did the EPA select the format for the proposed rule?

For Hg and PM (as a surrogate for non-Hg HAP metals) emissions from ceramic tile roller kilns and first-fire sanitaryware tunnel kilns, this proposed Clay Ceramics manufacturing rule includes numerical emission rate limits as a mass of pollutant emitted per ton of product produced. For non-Hg HAP metals emissions from ceramic tile glaze lines and sanitaryware glaze spray booths, this proposed Clay Ceramics manufacturing rule includes numerical emission rate limits for PM as a mass of pollutant emitted per ton of glaze sprayed. For Hg emissions from ceramic tile glaze lines, this proposed rule includes numerical emission rate limits as a mass of pollutant emitted per ton of glaze sprayed. For dioxin/furan emissions from ceramic tile roller kilns, floor tile press dryers, ceramic tile spray dryers and first-fire sanitaryware tunnel kilns, this proposed rule includes numerical emission limits in units of concentration. The selection of numerical emission rate limits and numerical emission limits as the format for this proposed Clay Ceramics manufacturing rule provides flexibility for the regulated community by allowing a regulated source to choose any control technology or technique to meet the emission limits, rather than requiring each unit to use a prescribed control method that may not be appropriate in each case. In addition, the selection of numerical emission rate limits as a mass of pollutant emitted per ton of product produced ensures that differences in the size or process rate of the affected source do not affect the level of emissions control achieved.

The PM limits are proposed as a surrogate for non-Hg HAP metals. The same control techniques that would be used to control PM will control non-Hg HAP metals. Particulate matter was also chosen instead of requiring control of specific individual HAP metals because all sources do not emit the same type and amount of non-Hg HAP metals due to differences in raw materials and glaze formulations. However, most sources generally emit PM that includes some amount and combination of HAP metals. The use of PM as a surrogate will also eliminate the cost of performance testing to comply with numerous standards for individual non-Hg HAP metals.

For acid gases (HF and HCl), this proposed Clay Ceramics manufacturing rule includes a health-based emission limit as a mass of HCl-equivalent emitted per hour. Further discussion about the development of health-based standards for the proposed Clay Ceramics manufacturing rule is provided in section VI.J of this preamble.

This proposed Clay Ceramics manufacturing rule includes work practices for sanitaryware shuttle kilns. As described in more detail in section VI.K.1 of this preamble, technological and economic limitations make it impracticable to measure compliance with numerical emission limits for sanitaryware shuttle kilns.

C. How did the EPA consider different subcategories?

Section 112(d)(1) of the CAA allows the EPA to promulgate emission standards for either categories or subcategories of sources. Through subcategorization, the EPA may distinguish among classes, types and sizes of sources within a category.

1. Sanitaryware Kilns

Upon initial consideration of the available information on the sanitaryware sector of the clay ceramics manufacturing industry, we determined that separate subcategories for sanitaryware periodic (shuttle) kilns and sanitaryware continuous (tunnel) kilns were warranted because shuttle kilns are smaller than tunnel kilns (with lower production on an hourly basis and accounting for only a small percentage of production) and are operated in batch cycles, whereas tunnel kilns operate continuously.

As noted in section VI.K.1 of this preamble, we have determined that it is technologically and economically infeasible to test shuttle kilns, thereby ruling out a quantitative analysis of how these differences impact emissions. However, a qualitative comparison can be made, in that smaller kilns operated periodically (*i.e.,* shuttle kilns) would be expected to have lower emissions over time compared to the larger, continuously operated tunnel kilns.

2. Sanitaryware Glazing

We also determined that separate subcategories for three different glaze application methods for sanitaryware were warranted. Manual glaze spraying is done by a human operator with one spray gun per station per booth. The ware are moved and set up manually and glaze is applied to one to two pieces at a time. The emissions per ton of glaze sprayed for this type of glaze spraying are the highest of the application methods. Spray machine, or chain-on-edge, glaze application is done by automatic reciprocating spray guns from a fixed location with 10 to 20 spray guns per booth. The ware are moved and set up on a ''chain-on-edge'' conveyor system and glaze is applied to six to seven pieces at a time. The emissions per ton of glaze sprayed for this type of glaze spraying are the second highest of the application methods. Robot glaze spraying is done by an automatic robot arm with one spray gun per booth. The ware are moved and set up manually and glaze is applied to one piece at a time. The emissions per ton of glaze sprayed for this type of glaze spraying are the lowest of the application methods.

We also examined subcategorization by manual spraying and non-manual spraying (where ''non-manual spraying'' would include both spray machine and robot glaze spraying), but we determined that the design and emission differences between spray machine and robot glaze spraying are significant enough to warrant separate subcategories.

D. What approaches did the EPA consider in developing the proposed emission limitations for existing and new sources?

As noted in section IV.D of this preamble, all standards for new and existing sources established pursuant to CAA section 112(d)(2) must reflect MACT. The remainder of this section describes the development of the pool of data used to calculate the MACT floors for Hg, PM (as a surrogate for non-Hg HAP metals) and dioxins/furans. As noted in section VI.J of this preamble,

health-based emissions standards are being proposed for the acid gases HF and HCl under the provisions of CAA section 112(d)(4). Consequently, the EPA has not prepared a MACT floor analysis for these pollutants.

In our MACT floor analyses for Hg, PM (as a surrogate for non-Hg HAP metals) and dioxins/furans, we separated the data by industry sector, source type and subcategory as described in section VI.C of this preamble (if applicable). Within each of those categories or subcategories, we ranked the data in terms of lb/ton for PM and Hg and in terms of nanograms per dry standard cubic meter (ng/dscm) at 7 percent O_2 for dioxins/furans (as described in section VI.E of this preamble). Because there are less than 30 sources in each subcategory, we identified the top five (best performing) sources for which we had data. For subcategories with less than five sources, we considered all sources for which we had data as best performing sources. Once we identified the best performing sources, we then calculated the MACT floor in units of lb/ton or ng/dscm at 7 percent O_2 (as applicable) as described in section VI.E of this preamble.

E. How did the EPA determine the MACT floors for existing sources?

The EPA must consider available emissions information to determine the MACT floors. For Hg, PM (as a surrogate for total non-Hg HAP metals) and dioxins/furans, we calculated the MACT floor for a subcategory of sources by ranking all the available emissions data for units within the subcategory with the best performing sources ranked at the top, as described later in this section and then using the test results from the best performing sources (up to five). Therefore, as discussed in section VI.D of this preamble, the MACT floor limits for Hg, PM (as a surrogate for total non-Hg HAP metals) and dioxins/furans were calculated based on the performance of the best performing sources in each of the subcategories.

The best performing sources were determined by ranking each source's average emission value from lowest to highest. We then determined the data distribution of the dataset made up of the top five best performers using kurtosis and skewness, as described in section IV.E of this preamble. We assessed variability of the best performers by calculating a UPL using the appropriate equation based on the data distribution. The UPL takes into consideration the average performance of the unit and the variability of the test runs during the testing conditions. As described in section IV.E of this preamble, the UPL represents the value which one can expect the mean of a specified number of future observations (*e.g.,* 3-run average) to fall below for the specified level of confidence, based upon the results of an independent sample from the same population. It is a standard statistical methodology used to account for variability.

A more detailed explanation of all the UPL equations used, including the calculations of kurtosis, standard error of kurtosis, skewness and standard error of skewness, can be found in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Clay Ceramics'' in Docket ID No. EPA–HQ–OAR–2013–0290.

We also compared the appropriate 3×RDL value to the calculated UPL value for each pollutant and subcategory. As described in section IV.E of this preamble, we used the greater of the 3×RDL value and calculated UPL value to ensure that measurement variability is adequately addressed in the MACT floor emissions limit. This check was part of the variability analysis for all existing MACT floors that had BDL or DLL run data present in the best performing datasets (see the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Clay Ceramics'' in Docket ID No. EPA–HQ–OAR–2013–0290).

As previously discussed, we accounted for variability in setting floors, not only because variability is an element of performance, but because it is reasonable to assess best performance over time. We believe this approach reasonably ensures that the emission limits selected as the MACT floors adequately represent the level of emissions actually achieved by the average of the best performing units, considering operational variability of those units. Both the analysis of the measured emissions from units representative of the best performers and the variability analysis are reasonably designed to provide a meaningful estimate of the average performance or central tendency, of the best performing five units in a given subcategory. A detailed discussion of the MACT floor methodology is presented in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Clay Ceramics'' in Docket ID No. EPA–HQ–OAR–2013–0290.

Table 10 of this preamble presents the average emission level of the best performing sources and the existing source MACT floor. Each subcategory had less than 30 sources nationwide; thus, the top five sources were used in the MACT floor. If we had data for less than five sources, we used all the data available. The existing source MACT floors are based on the UPL unless otherwise noted.

TABLE 10—SUMMARY OF MACT FLOOR RESULTS FOR CLAY CERAMICS EXISTING SOURCES [a]

Subcategory	Parameter	Hg [b] (lb/ton)	PM [b c] (lb/ton)	Dioxins/furans (ng/dscm at 7 percent O_2)
Floor tile roller kilns	Avg. of best performing sources	7.8 E–05	0.054	2.9
	MACT floor	1.3 E–04	0.18	4.6
Floor tile press dryers	Avg. of best performing sources			0.078
	MACT floor			[d] 0.19
Floor tile spray dryers	Avg. of best performing sources			0.96
	MACT floor			44
Wall tile roller kilns	Avg. of best performing sources	5.0 E–05	0.071	0.065
	MACT floor	2.0 E–04	0.20	0.17
Wall tile spray dryers	Avg. of best performing sources			0.053
	MACT floor			0.12 [d]
Tile glaze lines	Avg. of best performing sources	2.0 E–05	0.67	
	MACT floor	1.6 E–04 [d]	1.9	
First-fire sanitaryware tunnel kilns.	Avg. of best performing sources	1.6 E–04	0.12	0.81
	MACT floor	2.6 E–04	0.33	1.5

TABLE 10—SUMMARY OF MACT FLOOR RESULTS FOR CLAY CERAMICS EXISTING SOURCES [a]—Continued

Subcategory	Parameter	Hg [b] (lb/ton)	PM [b c] (lb/ton)	Dioxins/furans (ng/dscm at 7 percent O_2)
Sanitaryware manual glaze application.	Avg. of best performing sources		14	
	MACT floor		33	
Sanitaryware spray machine glaze application.	Avg. of best performing sources		5.9	
	MACT floor		12	
Sanitaryware robot glaze application.	Avg. of best performing sources		4.4	
	MACT floor		8.8	

[a] The existing source MACT floors are based on the UPL unless otherwise noted.
[b] Units of measure for kilns are lb/ton ware produced; for glazing are lb/ton glaze sprayed.
[c] PM is a surrogate for non-Hg HAP metals.
[d] The MACT floor is based on 3×RDL value.

F. How did the EPA determine the MACT floors for new sources?

The approach that we used to calculate the MACT floors for new sources is described in section IV.F of this preamble. This approach reasonably ensures that the emission limit selected as the MACT floor adequately represents the average level of control actually achieved in practice by the best controlled similar source, considering ordinary operational variability. A detailed discussion of the MACT floor methodology is presented in the technical memorandum ''Maximum Achievable Control Technology (MACT) Floor Analysis for Clay Ceramics'' in Docket ID No. EPA–HQ–OAR–2013–0290.

Table 11 of this preamble presents, for each subcategory and pollutant, the average emission level of the best performing similar source and the new source MACT floor. The new source MACT floors are based on the UPL unless otherwise noted.

TABLE 11—SUMMARY OF MACT FLOOR RESULTS FOR CLAY CERAMICS NEW SOURCES [A]

Subcategory	Parameter	Hg [b] (lb/ton)	PM [b c] (lb/ton)	Dioxins/furans (ng/dscm at 7 percent O_2)
Floor tile roller kilns	Avg. of top performer	3.5 E–05	0.020	1.1
	MACT floor	3.9 E–05	0.027	1.5
Floor tile press dryers	Avg. of top performer			0.070
	MACT floor			[d] 0.19
Floor tile spray dryers	Avg. of top performer			0.010
	MACT floor			[d] 0.17
Wall tile roller kilns	Avg. of top performer	5.0 E–05	0.071	0.065
	MACT floor	2.0 E–04	0.20	0.17
Wall tile spray dryers	Avg. of top performer			0.053
	MACT floor			[d] 0.12
Tile glaze lines	Avg. of top performer	7.4 E–06	0.15	
	MACT floor	1.6 E–04 [d]	0.61	
First-fire sanitaryware tunnel kilns.	Avg. of top performer	6.4 E–05	0.092	0.23
	MACT floor	1.2 E–04	0.095	0.37
Sanitaryware manual glaze application.	Avg. of top performer		3.3	
	MACT floor		3.8	
Sanitaryware spray machine glaze application.	Avg. of top performer		2.0	
	MACT floor		3.2	
Sanitaryware robot glaze application.	Avg. of top performer		1.3	
	MACT floor		2.2	

[a] The new source MACT floors are based on the UPL unless otherwise noted.
[b] Units of measure for kilns are lb/ton ware produced; for glazing are lb/ton glaze sprayed.
[c] PM is a surrogate for non-Hg HAP metals.
[d] The MACT floor is based on 3xRDL value.

G. What is our approach for applying the upper prediction limit to limited datasets?

As discussed in section IV.G of this preamble, there are specific considerations when dealing with limited datasets. For the clay ceramics source category, we have limited datasets for the following pollutants and subcategories:

- Hg, PM, and dioxins/furans for new floor tile roller kilns;
- dioxins/furans for new floor tile press dryers;
- dioxins/furans for new floor tile spray dryers;
- Hg and dioxins/furans for existing and new wall tile roller kilns;

- dioxins/furans for existing and new wall tile spray dryers;
- Hg and PM for new tile glaze lines;
- Hg, PM, and dioxins/furans for new sanitaryware tunnel kilns; and
- PM for new sanitaryware manual, spray machine, and robot glaze spray booths.

For each dataset, we performed the steps outlined in the memorandum titled ''Approach for Applying the Upper Prediction Limit to Limited Datasets,'' which is available in Docket ID No. EPA–HQ–OAR–2013–0291; see that memorandum for more information on the analysis and the results.

H. How did the EPA consider beyond-the-floor for existing sources?

As discussed in sections II.A and VI.D of this preamble, the EPA must consider emissions limitations and requirements that are more stringent than the MACT floor (*i.e.,* beyond-the-floor control options). When considering beyond-the-floor options, the EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy and non-air quality health and environmental impacts when doing so. Once the MACT floor determinations were complete for each subcategory, we considered various regulatory options more stringent than the MACT floor level of control (*e.g.,* the performance of technologies that could result in lower emissions) for the different subcategories.

We considered requiring each subcategory of existing sources to meet the new source MACT floors developed as described in section VI.F of this preamble. We analyzed the beyond-the-floor options for each pollutant separately for each subcategory of existing sources. Our analyses are documented in the technical memorandum ''Development of Cost and Emission Reduction Impacts for the Clay Ceramics NESHAP'' in Docket ID No. EPA–HQ–OAR–2013–0290 and summarized in the following paragraphs.

For Hg from existing sanitaryware tunnel kilns, based on the data available, we estimate that all existing tunnel kilns could meet the new source MACT floor emission limits described in section VI.F of this preamble without incurring additional emission control costs. Therefore, we are proposing a beyond-the-floor Hg limit for existing sanitaryware tunnel kilns equivalent to the new source MACT floor.

For several sources and pollutants, the existing source MACT floor and the new source MACT floor are the same value, usually because there is only one source with data in the subcategory or because both floors are based on the 3xRDL value. These sources/pollutants include dioxins/furans from floor tile press dryers, PM (as a surrogate for total non-Hg HAP metals), Hg and dioxins/furans from wall tile roller kilns, dioxins/furans from wall tile spray dryers and Hg from ceramic tile glaze lines. Therefore, we are not proposing beyond-the-floor limits for these sources and pollutants.

The incremental costs, emission reductions and cost effectiveness for all other beyond-the-floor options are summarized by subcategory and by pollutant in Table 12 of this preamble. In all these cases, we have concluded that the incremental costs of additional control above the MACT floor emission limits are not reasonable relative to the level of emission reduction achieved. Therefore, we are not proposing to go beyond-the-floor for any of the subcategory/pollutant concentrations included in Table 12 of this preamble.

TABLE 12—SUMMARY OF COSTS, EMISSIONS REDUCTIONS AND COST EFFECTIVENESS FOR SELECTED CLAY CERAMICS BEYOND-THE-FLOOR OPTIONS (2011 DOLLARS)

Subcategory	Pollutant	Cost (million)		Incremental HAP Emissions Reductions (tpy)	Cost Effectiveness ($/ton total HAP)
		Capital	Annual		
Floor tile roller kilns	Hg	$4.14	$3.16	0.044	$71,800,000
	Total non-Hg HAP metals	10.8	4.28	0.73	5,830,000
	Dioxins/furans	2.32	1.77	8.5 E–07	2,080,000,000,000
Floor tile spray dryers.	Dioxins/furans	0.335	0.278	4.6 E–08	5,990,000,000,000
Tile glaze lines	Total non-Hg HAP metals	7.67	2.70	0.038	70,600,000
First-fire sanitaryware tunnel kilns.	Total non-Hg HAP metals	3.91	2.01	0.020	102,000,000
	Dioxins/furans	2.98	1.78	3.4 E–08	51,700,000,000,000
Sanitaryware manual glaze application.	Total non-Hg HAP metals	6.78	2.19	0.24	9,090,000
Sanitaryware spray machine glaze application.	Total non-Hg HAP metals	1.89	0.900	0.14	6,420,000
Sanitaryware robot glaze application.	Total non-Hg HAP metals	4.97	2.22	0.097	23,000,000

I. How did the EPA consider beyond-the-floor for new sources?

The MACT floor level of control for each subcategory of new sources for each pollutant was based on the emission control that is achieved in practice by the best controlled similar source within each of the subcategories. When we establish a beyond-the-floor standard, we typically identify control techniques that have the ability to achieve an emissions limit more stringent than the MACT floor. No techniques were identified that would achieve HAP reductions greater than the new source floors for any of the subcategories for each pollutant. Therefore, the EPA is not proposing a beyond-the-floor limit for any of the new sources in this proposed Clay Ceramics manufacturing rule.

J. How did the EPA determine whether to set health-based standards for existing and new sources?

In developing the proposed Clay Ceramics manufacturing rule, we

considered whether it was appropriate to establish health-based emission standards under CAA section 112(d)(4) for the acid gases HF and HCl. The rationale for the development of health-based standards for the proposed Clay Ceramics manufacturing rule is the same as that presented for the proposed BSCP manufacturing rule, with a few exceptions, which are discussed in the sections below. The rationale for the development of health-based standards for the proposed BSCP manufacturing rule is discussed in section IV.J of this preamble.

1. What factors does the EPA consider in exercising its discretion whether to set a CAA section 112(d)(4) standard?

Section IV.J of this preamble discusses the following factors that the EPA considers in making a judgment whether to set a standard based on the health threshold or the traditional MACT process:

- The availability of data to set the health-based standard;
- Co-benefits that would be achieved via the MACT standard, such as reductions in emissions of other HAP and/or criteria pollutants;
- The potential impacts on ecosystems of releases of the pollutant; and
- The potential for cumulative adverse health effects due to concurrent exposure to the same HAP or other HAP with similar biological endpoints, from either the same or other source categories, where the concentration of the threshold pollutant emitted from the given source category is below the threshold.

The evaluation of the first three factors (availability of data, co-benefits and potential ecosystem impacts) are nearly identical for both the BSCP and clay ceramics industries. However, further analysis was required concerning the last factor (potential for cumulative adverse health effects). The evaluation of all four factors for the clay ceramics industry is provided below.

a. Availability of Data To Determine Standard

Like the BSCP manufacturing rule, because of the relatively small number of facilities compared to other rules such as the Boiler MACT proposal, the EPA was able to determine facility-specific information for the Clay Ceramics manufacturing rule, including tunnel and roller kiln locations and operating characteristics and stack parameters, available for all clay ceramics facilities to assess the feasibility of health-based standards in this proposed Clay Ceramics manufacturing rule. Such information enabled us to conduct the dispersion modeling necessary to establish a health-based emission limit for acid gases.[55]

Consequently, we have concluded that we have enough information to determine the health-based emission standards for the acid gases HF and HCl for the clay ceramics industry. As discussed in further detail below, these limits have been developed to ensure that exposure is below the health threshold for each facility and also ensure that acute exposures will not pose any health concerns.[56]

b. Co-Benefits

The additional nationwide SO_2 reductions that would be attributable to Clay Ceramics MACT standards for acid gases are estimated to be 31 tpy in the third year following promulgation of the proposed standards. Similar to BSCP, this reduction is substantially lower than the co-benefits from MACT standards for other industries for which the EPA has decided not to set a health-based limit,[57] and it would not be expected to provide a significant public health benefit in the circumstances here.

c. Ecosystem Impacts

For the section 112(d)(4) evaluation, the EPA assessed the acid gases HCl and HF around each clay ceramics facility. For HCl, the environmental risk screen indicated that the area-weighted average modeled concentrations of HCl around each facility (*i.e.,* the area-weighted average concentration of all offsite data points in the modeling domain) did not exceed the ecological benchmark. In addition, the ecological benchmark was not exceeded at any offsite receptor location for any facility.

For HF, the environmental risk screen indicated that the area-weighted average modeled concentrations of HF around each facility (*i.e.,* the area-weighted average concentration of all offsite data points in the modeling domain) did not exceed the ecological benchmarks. There were multiple facilities with modeled concentrations of HF at offsite receptor locations that exceeded the ecological benchmark, but the area over which the value was exceeded was no greater than one percent of the offsite modeling domain for each facility, indicating that there would not be any significant or widespread environmental effects.

d. Cumulative Effects

As noted previously, the EPA may consider the availability of information on emissions from co-located and nearby sources and consider if it is feasible to determine the potential cumulative health effects from emissions from the sources in the category when combined with other emissions from other sources that are co-located or located nearby. Relevant emissions may include both emissions of the same pollutant and emissions of other pollutants that may cause cumulative effects.

Through industry responses to the clay ceramics 2008 EPA survey and the 2010 EPA survey, we have substantial information on the locations of clay ceramics plants and the levels of HF and HCl emitted from those plants. While the major source ceramic tile plants are not co-located with any other type of operation, the three major source sanitaryware plants are. However, the sources co-located with the sanitaryware plants do not emit acid gases. The metal foundry plant co-located with the sanitaryware plant in Kohler, Wisconsin emits chiefly particulates and metals, while the fiberglass plants co-located with the sanitaryware plants in Spartanburg, South Carolina and Brownwood, Texas

[55] For more information, see the technical memorandum ''Risk Assessment to Determine a Health-Based Emission Limitation for Acid Gases for the Clay Ceramics Manufacturing Source Category'' in Docket ID No. EPA–HQ–OAR–2013–0290.

[56] See *Portland Cement NESHAP Final Rule,* 75 FR 54970, 54986/1 (September 9, 2010) (''[W]e currently lack information on the peak short-term emissions of HCl from cement kilns which might allow us to determine whether a chronic health-based emission standard for HCl would ensure that acute exposures will not pose health concerns.'')

[57] See *Portland Cement NESHAP Final Rule,* 75 FR 54970 (September 9, 2010)—Co-benefits was identified as the ''decisive factor'' in the *Portland Cement NESHAP Final Rule.* 75 FR 54970, 54985/3. There, EPA declined to set a health-based standard for HCl where setting a MACT standard also controlled other HAP and criteria pollutants. Specifically discussed were SO_2 and other HAP gases. See 75 FR at 54984/3 (''The additional reductions of SO_2 alone attributable to the MACT standards for HCl are estimated to be 124,000 tons per year'' and discussing both direct SO_2 effects and effects of SO_2 as a precursor to $PM_{2.5}$) and 75 FR at 54986/1 (''[Other HAP gases (chlorine (Cl_2), hydrogen cyanide (HCN) and hydrogen fluoride (HF))] are also controlled during the process of controlling HCl emissions from cement kilns using a wet scrubber. As such, their health impacts must be taken into account when considering a health-based emission limit for HCl.'' See also *Boiler MACT Final Rule,* 76 FR at 15644/1 (''EPA considered the comments received on this issue and continues to believe that the co-benefits are significant and provide an additional basis for the Administrator to conclude that it is not appropriate to exercise her discretion under section 112(d)(4).'') and *Boiler MACT Proposed Rule,* 75 FR 32006, 32032 (June 4, 2010)—Co-benefits from MACT standard for HCl and PM as surrogate for HAP metals included the reduction of 340,000 tons per year of SO_2 and unspecified reductions of PM, other non-HAP acid gases (hydrogen bromide) and mercury. See also *MATS Proposed Rule,* 76 FR 24976, 25051/1—Co-benefits from MACT standard for HCl and PM as surrogate for HAP metals included the reduction of 2.1 million tons per year of SO_2 and unspecified reductions of PM, other non-HAP acid gases (hydrogen bromide) and mercury.

emit chiefly organic HAP (styrene). Consequently, any acid gas emissions from co-located sources are not expected to impact the total facility acid gas emissions significantly.

Like BSCP facilities, clay ceramics facilities are typically located on large tracts of land needed for all of the processes involved in clay ceramics manufacturing, including raw material receiving, storage and processing; glaze preparation; forming; drying; glazing; firing; product inspection; and packaging. This provides an additional buffer between the clay ceramics plants and the surrounding area. Because of the relatively low plume heights, maximum risks from the clay ceramics plants are located close to the facility property line. In trying to define cumulative risks from nearby non-clay ceramics emissions, the location and emissions associated with other sources not in the clay ceramics source category are far less certain. While the 2008 EPA survey and the 2010 EPA survey data for clay ceramics facilities have been reviewed by EPA engineers and scientists, the emissions levels and locations of nearby other facilities such as those in the NEI have not undergone the same level of detailed review. Thus, a quantitative analysis of nearby emissions may contain significant of uncertainty. However, as discussed above, because of the large footprint of clay ceramic facilities and the clay ceramics risks being confined to the near plant locations, we do not expect that the combined emissions of HF or HCl from clay ceramics facilities and nearby other sources would result in substantial cumulative health and environmental effects.

2. How did the EPA set the level of the standard?

As with BSCP, the EPA is proposing to exercise its discretion to use CAA section 112(d)(4). This conclusion is consistent with the EPA's prior decisions where we found it appropriate not to exercise the discretion to invoke the authority in CAA section 112(d)(4) for acid gases, because the circumstances in this case differ from those previous considerations. We request comment on the analysis and conclusions regarding setting health-based standards.

Following from the EPA's determination that a health-based standard is appropriate, the standard must be set as follows:

- There must be an ample margin of safety to avoid the health effects on which the threshold is based.
- There must be no observable adverse effect.
- The standard must not allow greater adverse environmental effects as the MACT standard that would otherwise be established.
- A standard must be set; there can be no exclusions from compliance based on a showing that the source's emissions do not pose a health risk.

As part of the development of the proposed standards, we have maintained an inventory of major source facilities, including the size and operating hours of each tunnel and roller kiln and the geographic location and physical attributes (*e.g.,* stack height, diameter, exit gas flow rate) of each kiln stack. To develop a health-based emission limit, both long-term and short-term inhalation exposure concentrations and health risks from the Clay Ceramics Manufacturing source category were estimated using the HEM–3 model as described in section IV.J.3 of this preamble. Further information on the overall modeling approach is presented in the technical memorandum, ''Risk Assessment to Determine a Health-Based Emission Limitation for Acid Gases for the Clay Ceramics Manufacturing Source Category'' in Docket ID No. EPA–HQ–OAR–2013–0290.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each acid gas emitted by each source in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. Chronic noncancer health hazards are expressed by comparing a chronic exposure to a reference level as a ratio. Because we performed HEM–3 model runs for each acid gas individually, we did not aggregate HQ values of different acid gases. Of course, multiple acid gas pollutants are emitted at clay ceramics facilities, but a 600 tpy level of HCl-equivalent emissions (based on the HEM risks modeling) ensures that a TOSHI of 1 is not exceeded, as long as the HCl-equivalent emissions do not exceed 600 tpy. It is important to note that this emission limit is only applicable to the sources in this source category and should not be considered for sources other than those included in this analysis. Equivalent emissions for HF are determined by the ratio of the chronic RfC to that for HCl, such that the HCl-equivalent emissions for HF are 420 tpy.

Because the emissions equivalency was based on chronic dose-response values, the 600 tpy level does not necessarily ensure that acute reference levels will not be exceeded. For the HCl model runs, there were no facilities with acute screening HQ values exceeding 1. For HF, we estimate that two of the eight facilities examined had an acute value exceed the REL with the highest being two. However, no facility exceeded an HQ (AEGL–1) value for HF. To assure that no source emits more than the 600 tpy HCl-equivalent limit in a single hour, we propose setting the emissions limit at the hourly equivalent of 600 tpy (140 lb/hr of HCl-equivalent emissions).

It is important to note that the above emissions thresholds are developed from back-calculating the emissions that would result in an HQ of 1 at the worst-case facility. Potential risks at other facilities (not the worst-case facility) are predicted to be well below 1.

Because we had site-specific data on the operation of each tunnel and roller kiln, we were able to use dispersion modeling to ensure that: (1) The health-based emission limit cited above for clay ceramics facilities provides an ample margin of safety and (2) persons exposed to emissions of the pollutant would not experience the adverse health effects on which the threshold is based. In addition, as stated previously, the levels of acid gas emissions associated with clay ceramics kilns, based on results from the EPA's environmental risk screen methodology outlined above, are not expected to have an adverse environmental impact.

Facilities would demonstrate compliance with the health-based emission limit by determining their facility-wide HCl and HF emissions, calculating the HCl-equivalent emissions for HF using RfC values and adding the HCl emissions to the HCl-equivalent value to calculate the total HCl-equivalent emissions. An equation to perform this calculation is provided in the proposed Clay Ceramics manufacturing rule. For more information on the development of the health-based standard, see the technical memorandum ''Risk Assessment to Determine a Health-Based Emissions Limitation for Acid Gases for the Clay Ceramics Manufacturing Source Category'' in Docket ID No. EPA–HQ–OAR–2013–0290. For more information on the calculation of an HCl-equivalent value, see the technical memorandum ''Development of Cost and Emission Reduction Impacts for the Clay Ceramics NESHAP'' in Docket ID No. EPA–HQ–OAR–2013–0290.

K. How did the EPA determine whether to set work practice standards for existing and new sources?

Under CAA section 112(h), the EPA may set work practice standards in place of an emissions standard where it is not feasible to prescribe or enforce an emission standard. The EPA is proposing to conclude that an emissions standard for sanitaryware shuttle kilns is not feasible because the application of measurement methodology to these sources is not practicable due to technological and economic limitations. Therefore, the EPA is proposing a work practice standard for sanitaryware shuttle kilns in lieu of emission limits for acid gases (HF and HCl), Hg and non-Hg HAP metals. The rationale for this work practice standard is discussed in the paragraphs below.

1. Rationale for Setting Work Practice Standard in Lieu of Emission Standards

a. Overview

Shuttle kilns at sanitaryware facilities are a type of periodic kiln used primarily to refire rejected pieces that have been machined and reglazed (although some shuttle kilns are used as first-fire units). Shuttle kilns are designed with a removable superstructure that is tilted or raised using hydraulic struts to allow entrance and egress. The main advantage of this type of kiln is that it can readily accommodate changes in firing temperature profile and cycle time to match the requirements of a wide variety of ceramic products. The primary disadvantage of this type of kiln is much higher energy costs per ton when compared to tunnel kilns and roller kilns.[58]

Shuttle kilns are batch operated, meaning that a batch starts cold and ends cold. The sanitaryware industry operates shuttle kilns on batch cycle times of 18 to 38 hours, with the most common cycle times between 22 and 30 hours. As shuttle kilns operate through a heating cycle, temperatures are either in ramp-up or cool-down mode.[59]

b. Emissions and Testing

Emission rates can vary over the batch cycle due to the temperature cycle of the kiln. In order to accurately determine the total emissions from a shuttle kiln cycle, emissions from the entire cycle period would need to be tested.[60] As with testing BSCP periodic kilns, testing sanitaryware shuttle kilns for any less time could result in estimated emissions that are either higher or lower than actual emissions, depending on when during the kiln cycle the emissions are sampled.[61]

Conducting a shuttle kiln test on even the shortest cycle time would require a test crew to be on site for at least 24 hours and would require the test team to have at least a dozen or more sampling train set-ups or additional manpower on site to recover samples and turn-around sampling trains for subsequent use during the test. It is estimated that the test of a single shuttle kiln firing cycle with analysis would cost $20,000 or more (2009 dollars). As with BSCP periodic kilns, sampling a single firing cycle might not be adequate for characterizing shuttle kiln emissions, due to variations during firing cycles and variations across tests. To collect three test runs of data, two additional cycles would need to be tested, bringing the cost to $60,000 or more (2009 dollars) to test a single shuttle kiln. Furthermore, the sanitaryware facilities covered under this proposed Clay Ceramics manufacturing rule have three or more shuttle kilns each, requiring additional tests at each facility.[62]

c. Test Methods and Costs

As noted in section VI.K.1.a of this preamble, when EPA Method 26 or 26A is used, breakthrough of HCl can occur if emissions are variable and experience large spikes, as appears to be the case for BSCP periodic kilns. Testing of sanitaryware shuttle kilns could encounter a similar problem. Another disadvantage to using Methods 26 or 26A for testing throughout shuttle kiln cycles is the need for additional manpower to operate the sampling trains around the clock and to recover samples.[63]

An alternative to using Method 26 or 26A is to conduct the tests using FTIR according to EPA Method 320, where HCl breakthrough is not an issue. In addition, FTIR also provides near real-time emissions data. However, the cost for FTIR testing would be similarly expensive as testing by Method 26 or 26A throughout an entire cycle. The cost for testing by FTIR is estimated to be $49,750 (2009 dollars) for a single 50-hour kiln cycle (the average cycle time for a BSCP periodic kiln). Assuming a 50 percent reduction in cost for an average 25-hour sanitaryware shuttle kiln cycle, the cost to test one cycle would still be substantial (nearly $25,000 (2009 dollars)). If it were determined that the variations in emissions from cycle to cycle were significant, it might be necessary to test each kiln for two or more cycles in order to develop a representative emission rate. Testing for a second cycle would double the testing cost to almost $50,000 and testing for a third cycle would triple the cost to almost $75,000 (2009 dollars). In addition to these costs, additional costs would be incurred for testing the kilns for PM emissions, which would have to be tested using a manual test method (*e.g.,* EPA Methods 5 or 17). If additional shuttle kilns needed to be tested at each facility, the costs would be even higher.[64]

While no formal cost-to-sales analysis was conducted for sanitaryware shuttle kilns like the one conducted for BSCP periodic kilns (see section IV.K.1 of this preamble), a similar informal analysis was performed using the sales and production data provided in the 2008 EPA survey responses (claimed as CBI by the respondent). Based on this analysis, a similar conclusion (that testing is not economically feasible) can be reached. Because the test costs are similar and shuttle kilns represent a small share of total sanitaryware production and revenues, the EPA has concluded that it would not be economically feasible to require testing for shuttle kilns.

d. Feasibility of Numerical Emission Limits for Shuttle Kilns

CAA section 112(h)(1) states that the Administrator may prescribe a work practice standard or other requirements, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. CAA section 112(h)(2)(B) further defines the term ''not feasible'' in this context to apply when ''the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations.''

[58] See the memorandum titled ''Characterization of the Ceramic Manufacturing Industry'' in the original Clay Ceramics NESHAP docket, incorporated by reference into the docket for the proposed Clay Ceramics rulemaking.

[59] See the email titled ''Kohler's response to EPA question regarding options for if and how shuttle kilns (periodic kilns) should be addressed,'' in the docket for this proposed rule.

[60] *Id.*

[61] See the memorandum entitled ''Rationale for Establishing Work Practice Standards for Periodic Brick Kilns'' in Docket ID No. EPA–HQ–OAR–2013–0290.

[62] See the sanitaryware industry communication titled ''Kohler's response to EPA question regarding options for if and how shuttle kilns (periodic kilns) should be addressed,'' in Docket ID No. EPA–HQ–OAR–2013–0290.

[63] See the RTI memorandum titled ''Rationale for Establishing Work Practice Standards for Periodic Brick Kilns'' in Docket ID No. EPA–HQ–OAR–2013–0290.

[64] *Id.*

Because of the technological and economic limitations described above, we conclude that it is not practicable to establish numerical emission limits for sanitaryware shuttle kilns. Demonstrating compliance with a numerical emissions limit for shuttle kilns is technologically limited to testing procedures that are economically infeasible for the sanitaryware industry. Consequently, we are proposing a work practice standard for sanitaryware shuttle kilns under CAA section 112(h).

2. Work Practice Standard

The work practice standard for sanitaryware shuttle kilns proposed in today's Clay Ceramics manufacturing rule includes the following specific provisions: [65]

- Each facility would have to use natural gas or equivalent as the kiln fuel, except during periods of natural gas curtailment or supply interruption.
- Each facility would have to develop and use a designed firing time and temperature cycle for each product produced in the shuttle kiln, by programming the time and temperature cycle into the kiln or by tracking each step on a log sheet.
- Each facility would have to label each shuttle kiln with the maximum load (in tons) that can be fired in the kiln during a single firing cycle.
- For each firing load, each facility would have to limit the total tonnage placed in the kiln to no more than the maximum load and each facility would have to document the total tonnage placed in the kiln to show that it is not greater than the maximum load.
- Each facility would have to develop and implement maintenance procedures for each kiln that specify the frequency of inspection and maintenance of the following items:
  - Calibration of temperature measuring devices
  - Controls that regulate air-to-fuel ratios
  - Controls that regulate firing cycles
- Each facility would have to develop and maintain records required for each shuttle kiln, including logs to document the proper operation of the shuttle kilns and logs of the maintenance procedures used to demonstrate compliance with the standard.

L. How did the EPA develop the startup and shutdown requirements?

As stated in section V.E of this preamble, we are proposing work practice standards for periods of startup and shutdown for ceramic tile roller kilns, floor tile press dryers, ceramic tile spray dryers and sanitaryware tunnel kilns. We are not proposing alternate standards for periods of startup and shutdown for ceramic tile glaze lines or sanitaryware glaze spray booths.

As noted in section V.B of this preamble, roller and tunnel kilns and dryers typically operate continuously, so startups and shutdowns are infrequent. Startup of a roller or tunnel kiln involves starting up the burners based on a set procedure to raise the temperature of the kiln to the proper operational temperature for manufacturing clay ceramics. Shutdown of a roller or tunnel kiln is the process of cooling the kiln from the proper operational temperature by stopping the burners based on a set procedure. Similarly, startup and shutdown of a dryer is the process of raising the temperature to the proper operational temperature or lowering the temperature from the proper operational temperature for manufacturing clay ceramics. When the temperature of the kiln or dryer is below the proper operational temperature, ceramic tile and sanitaryware manufacturers typically do not push ceramics into the kiln, so the emissions are expected to be much lower during startup and shutdown than during normal operations.

While a kiln or dryer is heating to the proper operational temperature during startup or cooling from the operational temperature during shutdown, other parameters such as exhaust flow rate, moisture content, O_2 concentration and pressure are also changing. In addition, the changes in these parameters may not happen smoothly and consistently as startup or shutdown progresses, as the kiln or dryer does not heat or cool evenly. The fluctuations in all these parameters are not consistent with the relatively steady-state conditions needed for valid, accurate results over three test runs using the measurement methods proposed to be used to demonstrate compliance. Even if testing were feasible during startup and shutdown, the emission limit formats chosen for this proposed Clay Ceramics manufacturing rule are not appropriate for use during periods other than normal operation. Specifically, if there is no throughout in the kiln or dryer, emission limits that are in a mass per throughput format would be essentially meaningless.

We did not receive any detailed information through the 2010 EPA survey about the startup or shutdown of ceramic tile roller kilns, floor tile press dryers, ceramic tile spray dryers or sanitaryware tunnel kilns. However, ceramic tile roller kilns or sanitaryware tunnel kilns are fired at similar or slightly higher temperatures to BSCP tunnel kilns and they would likely use similar APCD to comply with the standards. Therefore, we expect that the issues described in section IV.E of this preamble associated with venting low-temperature kiln exhaust through an APCD on a BSCP tunnel kiln would also apply to an APCD on a ceramic tile roller kiln, floor tile press dryer, ceramic tile spray dryer or sanitaryware tunnel kiln. We also expect that the low temperature set points would be about the same as for BSCP tunnel kilns, as those temperatures are based on the tolerance of the APCD.

Therefore, we are proposing work practice standards for periods of startup and shutdown for ceramic tile roller kilns, floor tile press dryers, ceramic tile spray dryers and sanitaryware tunnel kilns with APCD. For startup, the owner or operator would be required to vent the exhaust from the kiln or dryer through the APCD by the time the kiln or dryer exhaust temperature reaches 400 °F. In addition, no ceramics or other product may be introduced to the kiln or dryer until the kiln or dryer exhaust temperature reaches 400 °F and the exhaust is being vented through the APCD. For shutdown, the owner or operator would be required to vent the exhaust from the kiln or dryer through the APCD until the kiln or dryer exhaust temperature falls below 300 °F. In addition, no ceramics or other product may be introduced to the kiln or dryer once the kiln or dryer exhaust temperature falls to 300 °F and the exhaust is no longer being vented through the APCD. When the kiln or dryer exhaust is being vented through the APCD, the owner or operator would be required to comply with the applicable continuous compliance requirements described in section V.G of this preamble.

For ceramic tile roller kilns, floor tile press dryers, ceramic tile spray dryers and sanitaryware tunnel kilns that can meet the proposed standards without an APCD, there are no concerns about damaging an APCD or procedures for bypassing an APCD. In addition, we did not receive any data through the 2010 EPA survey regarding startup and shutdown of uncontrolled kilns. However, as noted above, we recognize that it is not feasible to conduct emission testing during periods of startup and shutdown. Therefore, we are proposing work practice standards for periods of startup and shutdown for ceramic tile roller kilns or sanitaryware tunnel kilns without an APCD. For startup, no ceramics or other product may be introduced to the kiln or dryer until the kiln or dryer exhaust temperature reaches 400 °F. For shutdown, no ceramics or other product may be put into the kiln or dryer once the kiln or dryer exhaust temperature falls to 300 °F. When there are ceramics

[65] See the BSCP industry communication titled ''Periodic kiln language,'' in the docket for the proposed Clay Ceramics rulemaking.

in the kiln or dryer, the owner or operator would be expected to demonstrate compliance with the emissions limitations (as described in section V.G of this preamble).

We are not proposing alternate standards (either work practice standards or an alternate numeric emission limit) for periods of startup and shutdown for ceramic tile glaze lines or sanitaryware glaze spray booths. These sources would be expected to comply with the emissions limitations (as described in section V.G of this preamble) at all times when the source is operating, including periods of startup and shutdown. We did not receive any data through the 2010 EPA survey suggesting that alternate standards for periods of startup and shutdown are needed for these sources. Glazing operations are intermittent in nature during normal operations, so emissions during startup and shutdown would not be expected to be different than emissions during normal operations.

M. How did the EPA select the compliance requirements?

We are proposing testing and monitoring requirements that are adequate to assure continuous compliance with the requirements of this proposed Clay Ceramics manufacturing rule. These requirements are described in detail in sections V.F and V.G of this preamble. We selected these requirements based upon our determination of the information necessary to ensure that the emission standards are being met and the work practices are being followed and that APCD and equipment are maintained and operated properly. Further, these proposed requirements ensure compliance with this proposed Clay Ceramics manufacturing rule without imposing a significant additional burden for facilities that must implement them.

We are proposing that initial compliance with the emission limits for HF, HCl, PM, Hg and dioxins/furans be demonstrated by an initial performance test. The proposed Clay Ceramics manufacturing rule would also require 5-year repeat performance tests to ensure, on an ongoing basis, that the APCD is operating properly and that its performance has not deteriorated.

The majority of test methods that this proposed Clay Ceramics manufacturing rule would require for the performance stack tests (*e.g.,* EPA Methods 5, 26A and 29) have been required under many other EPA standards. Many of the emissions tests upon which the proposed emission limits are based were conducted using these test methods.

When a performance test is conducted, we are proposing that parameter operating limits be determined during the test. To ensure continuous compliance with the proposed emission limits, the proposed Clay Ceramics manufacturing rule would require continuous parameter monitoring of the kilns and APCD and maintaining these parameters within the operating limits established during the performance test. We selected these parameter monitoring requirements because they produce data that will be useful to both the owners or operators and the EPA for ensuring continuous compliance with the emission limits and/or operating limits and because of their reasonable cost and ease of execution.

The APCD monitoring parameters included in the proposed rule were chosen for the types of APCD commonly used in the clay ceramics industry or anticipated to be used to comply with the proposed emission limits. These parameters include lime injection rate (on a per ton of fired product basis) for DIFF and DLS/FF; pressure drop, pH, liquid flow rate and chemical addition rate (if applicable) for wet scrubbers; activated carbon flow rate for ACI systems; periodic inspections for water curtains; and annual inspections for baffles. If applicable for demonstrating compliance with the HF/HCl standard, the kiln monitoring parameter included in the proposed Clay Ceramics manufacturing rule is the kiln process rate. To demonstrate compliance with the dioxin/furan standard for those affected sources without an ACI system, the monitoring parameter included in the proposed Clay Ceramics manufacturing rule is the operating temperature for the affected process (tunnel or roller kiln, ceramic tile spray dryer, floor tile press dryer), because the formation and destruction of dioxins/furans are influenced by temperature conditions. Many of these CPMS are standard features on ceramic tile roller kilns and sanitaryware tunnel kilns and their associated APCD and have also been used in other standards for similar industries.

In addition to parameter monitoring, the proposed Clay Ceramics manufacturing rule also includes a requirement for kilns equipped with a FF (*e.g.,* a DIFF, DLS/FF or stand-alone FF) to either install a BLD system or monitor VE. Similar to the CPMS being proposed, BLD systems have also been used in other standards in similar industries. We have also determined that periodic VE checks are a reasonable alternative to BLD systems for this proposed Clay Ceramics manufacturing rule. Periodic VE checks have also been proposed for affected sources without an add-on control to demonstrate continuous compliance.

N. How did the EPA determine compliance times for the proposed rule?

Section 112 of the CAA specifies the dates by which affected sources must comply with the emission standards. Under CAA section 112(i)(1), new or reconstructed units must be in compliance with this proposed rule immediately upon startup or the effective date of the final rule, whichever is later. (The final action is expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule is expected to be 60 days after the final rule is published in the **Federal Register**.)

Under CAA section 112(i)(3), existing sources are allowed up to 3 years after the effective date of the rule to comply with the final rule. For this industry, we believe that 3 years for compliance is necessary to allow adequate time to design, install and test any control systems that may need to be retrofitted onto existing sources, as well as obtain permits for the use of add-on controls.

The compliance data for existing area sources that subsequently become major sources is governed by 40 CFR 63.6(c)(5). We are proposing that such sources have 3 years from the date they become major sources to come into compliance, which is equivalent to the compliance period for existing sources discussed in the previous paragraph. Further, under the current regulations in 40 CFR 63.6(b)(7), where an area source becomes a major source by the addition of equipment or operations that meet the definition of new affected source under this rule, that portion of the existing facility that is a new affected source must be in compliance upon initial startup.

O. How did the EPA determine the required records and reports for the proposed rule?

We are proposing that owner/operators would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 9 of the proposed Clay Ceramics manufacturing rule. We evaluated the General Provisions requirements and included those we determined to be the notification, recordkeeping and reporting necessary to ensure compliance with and effective enforcement of, this proposed Clay Ceramics manufacturing rule.

We are also proposing that the owner or operator keep records on the firing time and temperature cycle for each sanitaryware shuttle kiln, the type of product fired in each batch and the amount of product fired in the shuttle kiln, to address the operational factors that impact HAP emissions from shuttle kilns and demonstrate compliance with the work practice standard for shuttle kilns (discussed further in section VI.K.1 of this preamble).

In addition, we are proposing that the owner or operator keep records and submit a report of each malfunction and the corrective action taken as part of the next semiannual compliance report. The proposed compliance report would provide information on each type of malfunction which occurred during the reporting period and which caused or may have caused an exceedance of an emission limit.

This proposed Clay Ceramics manufacturing rule also includes a requirement for electronic reporting of performance test data, which is discussed further in section III.I of this preamble.

We request comment on ways that we could streamline the recordkeeping and reporting requirements of the proposed Clay Ceramics manufacturing rule by relying on existing business practices.

P. How does the proposed rule affect permits?

The CAA requires that sources subject to this Clay Ceramics manufacturing rule, once finalized, be operated pursuant to a permit issued under an EPA-approved State operating permit program. The operating permit programs are developed under title V of the CAA and the implementing regulations under 40 CFR parts 70 and 71. If the facility is operating in the first 3 years of an operating permit, the owner or operator will need to obtain a revised permit to incorporate the requirements of this Clay Ceramics manufacturing rule. If the facility is in the last 2 years of an operating permit, the owner or operator will need to incorporate the requirements of this Clay Ceramics manufacturing rule into the next renewal of the permit.

VII. Summary of the Environmental, Energy and Economic Impacts of the Proposed Standards

A. What are the cost and emissions reduction impacts?

Table 13 of this preamble illustrates the costs and emissions reductions for existing sources under the BSCP manufacturing and Clay Ceramics manufacturing proposed rule.

TABLE 13—SUMMARY OF COSTS AND EMISSIONS REDUCTIONS FOR BSCP AND CLAY CERAMICS EXISTING SOURCES [a]

[2011 dollars]

Industry	Cost (million)		Emissions reductions (tpy)							
	Capital	Annual	HF	HCl	Cl_2	Non-Hg HAP metals [b]	Hg	PM	$PM_{2.5}$	SO_2
BSCP	$55.9	$19.0	410	24.0	2.09	3.79	0.0590	359	172	255
Clay Ceramics	0.102	0.0458	0	0	0	0	0	0	0	0

[a] Includes costs for APCD, testing and monitoring.
[b] Includes antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel and selenium.
[c] $PM_{2.5}$ = particulate matter with particles less than 2.5 micrometers in diameter.

The nationwide capital and annual costs of the proposed BSCP manufacturing rule are expected to total $55.9 million and $19.0 million, respectively (2011 dollars). The nationwide HAP emissions reductions achieved under the proposed BSCP manufacturing rule are expected to total 440 tpy. The methodology used to estimate the nationwide costs and emissions reductions of the proposed BSCP manufacturing rule is presented in the technical memoranda titled ''Development of Cost and Emission Reduction Impacts for the BSCP NESHAP'' and ''Monitoring and Testing Requirements and Costs for the BSCP NESHAP'' in Docket ID No. EPA–HQ–OAR–2013–0291.

It is anticipated that all sanitaryware emission points will meet the MACT floor emission limits in the proposed Clay Ceramics manufacturing rule, so no emission control costs or emissions reductions are expected for these sources. However, these facilities will incur monitoring and testing costs to demonstrate compliance with the proposed Clay Ceramics manufacturing rule. These costs are documented in the technical memorandum titled ''Monitoring and Testing Requirements and Costs for the Clay Ceramics NESHAP'' in Docket ID No. EPA–HQ–OAR–2013–0290.

There are no major sources producing ceramic tile. The five facilities that were major sources at the time of the 2008 and 2010 EPA surveys have already taken the necessary steps to become synthetic area sources. Consequently, none of the known tile facilities will be subject to the provisions of the Clay Ceramics manufacturing rule, which means that no costs or emissions reductions are expected for tile affected sources under the proposed Clay Ceramics manufacturing rule. We request comment on whether we need to finalize the standards for ceramic tile manufacturing even though there currently are no major sources.

B. What are the secondary impacts?

Table 14 of this preamble illustrates the secondary impacts for existing sources under the BSCP and Clay Ceramics proposed rule.

TABLE 14—SUMMARY OF SECONDARY IMPACTS FOR BSCP AND CLAY CERAMICS EXISTING SOURCES [a]

Control option	Secondary air emissions (tpy)					Energy impacts (MMBtu/yr)	Solid waste impacts (tpy)
	PM	$PM_{2.5}$	CO	NO_X	SO_2		
BSCP	1.93	0.646	3.60	28.0	81.7	268,000	8,630
Clay Ceramics	0	0	0	0	0	0	0

[a] $PM_{2.5}$ = particulate matter with particles less than 2.5 micrometers in diameter; CO = carbon monoxide; NO_X = nitrogen oxides; MMBtu/yr = million British thermal units per year.

The relevant secondary impacts that were evaluated for the BSCP manufacturing and Clay Ceramics manufacturing proposed rule includes secondary air emissions, energy impacts and solid waste impacts. Indirect or secondary air emissions are impacts that result from the increased electricity usage associated with the operation of APCD to meet the proposed limits (*i.e.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity needed to operate the APCD and solid waste impacts consist of the particulate captured by the APCD that is disposed of as waste (not reused or recycled).

Under the proposed BSCP manufacturing rule, the nationwide secondary emissions of the criteria pollutants PM, carbon monoxide (CO), nitrogen oxides (NO_X) and SO_2 are expected to total 115 tpy, with energy impacts of 268,000 million British thermal units per year (MMBtu/yr) and solid waste impacts of 8,630 tpy. The methodology used to estimate the nationwide secondary impacts of the proposed BSCP manufacturing rule is presented in the technical memorandum ''Development of Cost and Emission Reduction Impacts for the BSCP NESHAP'' in Docket ID No. EPA–HQ–OAR–2013–0291.

As noted in the previous section, it is anticipated that all sanitaryware emission points will meet the MACT floor emission limits in the proposed Clay Ceramics manufacturing rule, so there are no secondary impacts expected for these sources. There are no major sources producing ceramic tile. The five facilities that were major sources at the time of the 2008 and 2010 EPA surveys have already taken the necessary steps to become synthetic area sources. Consequently, none of the known ceramic tile facilities are expected to be subject to the provisions of the Clay Ceramics manufacturing rule, which means that no secondary impacts are expected for ceramic tile affected sources under the proposed Clay Ceramics manufacturing rule.

C. What are the economic impacts?

For the BSCP Manufacturing source category, the average national brick price under the proposed standards increases by 1.4 percent or $3.29 per 1,000 Standard Brick Equivalent (SBE) (2011 dollars), while overall domestic production falls by 1.1 percent or 38 million bricks per year. Under the proposed standards, the EPA estimated that one to two BSCP manufacturing facilities are at significant risk of closure.

Based on the results of the small entity screening analysis for BSCP Manufacturing, the EPA concluded that it is not able to certify that the BSCP manufacturing rule will not have a significant impact on a substantial number of small entities. As a result, the EPA initiated a SBAR Panel and undertook an Initial Regulatory Flexibility Analysis (IRFA).

For clay ceramics manufacturing, one sanitaryware company owns major sources and will incur costs. That affected company is not a small business. The compliance costs are less than 0.001 percent of sales for the affected company. Hence, the economic impact for compliance is minimal. Because no small firms face significant control costs, there is no significant impact on small entities. Thus, the proposed Clay Ceramics regulation is not expected to have significant impact on a substantial number of small entities.

For more information on the benefits analysis and market analyses, please refer to the Regulatory Impact Analysis (RIA) for the BSCP manufacturing rule, ''Regulatory Impact Analysis: Proposed Brick and Structural Clay Products NESHAP,'' which is available in Docket ID No. EPA–HQ–OAR–2013–0291.

D. What are the social costs and benefits?

Emission controls installed to meet the requirements of the proposed BSCP manufacturing rule will generate benefits by reducing emissions of HAP as well as criteria pollutants and their precursors, NO_X and SO_2. SO_2 and NO_X are precursors to $PM_{2.5}$ (particulate matter with particles less than 2.5 micrometers in diameter) and Nox is a precursor to ozone. The criteria pollutant benefits are considered co-benefits for this proposed rule. For this proposed rule, we were only able to quantify the health co-benefits associated with reduced exposure to $PM_{2.5}$ from emission reductions of SO_2 and directly emitted $PM_{2.5}$ because of methodological limitations associated with quantifying and monetizing HAP benefits. We estimate the monetized co-benefits of the proposed BSCP NESHAP in 2018 to be $52 million to $120 million (2011 dollars) at a 3-percent discount rate and $47 million to $110 million (2011 dollars) at a 7-percent discount rate. Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower co-benefits estimates are plausible, but most of the expert-based estimates fall between these two estimates.[66] A summary of the emission reduction and monetized co-benefits estimates for this proposed BSCP manufacturing rule at discount rates of 3 percent and 7 percent is in Table 15 of this preamble.

TABLE 15—SUMMARY OF THE MONETIZED $PM_{2.5}$ CO-BENEFITS FOR BRICK AND STRUCTURAL CLAY PRODUCTS MANUFACTURING NESHAP FOR IN 2018

[Millions of 2011 dollars] [a, b]

Pollutant	Emission reductions (tpy)	Total monetized co-benefits (3 percent Discount)	Total monetized co-benefits (7 percent Discount)
Directly emitted $PM_{2.5}$	170	45 to 100	41 to 92.
$PM_{2.5}$ precursors			
SO_2	173	7 to 16	6 to 14.

[a] All estimates are for the analysis year and are rounded to two significant figures so numbers may not sum across rows. The total monetized co-benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$ through reductions of $PM_{2.5}$ precursors, such as SO_2 and directly emitted $PM_{2.5}$. It is important to note that the monetized co-benefits do not include reduced health effects from exposure to HAP, direct exposure to nitrogen dioxide (NO_2), exposure to ozone, ecosystem effects or visibility impairment.

[66] Roman, et al., 2008. ''Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S.,'' *Environ. Sci. Technol.,* 42, 7, 2268–2274.

[b] PM co-benefits are shown as a range from Krewski, *et al.* (2009) to Lepeule, *et al.* (2012). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effects estimates by particle type.

These co-benefits estimates represent the total monetized human health benefits for populations exposed to less $PM_{2.5}$ from controls installed to reduce air pollutants in order to meet this proposed rule. Due to analytical limitations, it was not possible to conduct air quality modeling for this proposed rule. Instead, we used a ''benefit-per-ton'' approach to estimate the benefits of this rulemaking. To create the benefit-per-ton estimates, this approach uses a model to convert emissions of $PM_{2.5}$ precursors into changes in ambient $PM_{2.5}$ levels and another model to estimate the changes in human health associated with that change in air quality, which are then divided by the emissions in specific sectors. These benefit-per-ton estimates were derived using the approach published in Fann et al. (2012),[67] but they have since been updated to reflect the studies and population data in the 2012 p.m. National Ambient Air Quality Standards (NAAQS) RIA.[68] Specifically, we multiplied the benefit-per-ton estimates from the ''Non-EGU Point other'' category by the corresponding emission reductions.[69] All national-average benefit-per-ton estimates reflect the geographic distribution of the modeled emissions, which may not exactly match the emission reductions in this rulemaking and thus, they may not reflect the local variability in population density, meteorology, exposure, baseline health incidence rates or other local factors for any specific location. More information regarding the derivation of the benefit-per-ton estimates for this category is available in the technical support document, which is available in Docket ID No. EPA–HQ–OAR–2013–0291.

These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effects estimates by particle type. Even though we assume that all fine particles have equivalent health effects, the benefit-per-ton estimates vary between precursors depending on the location and magnitude of their impact on $PM_{2.5}$ levels, which drive population exposure.

It is important to note that the magnitude of the $PM_{2.5}$ co-benefits is largely driven by the concentration response function for premature mortality. We cite two key empirical studies, one based on the American Cancer Society cohort study[70] and the extended Six Cities cohort study.[71] In the RIA for this rule, which is available in Docket ID No. EPA–HQ–OAR–2013–0291, we also include benefits estimates derived from expert judgments (Roman et al., 2008) as a characterization of uncertainty regarding the $PM_{2.5}$-mortality relationship.

Considering a substantial body of published scientific literature, reflecting thousands of epidemiology, toxicology and clinical studies, the EPA's Integrated Science Assessment for Particulate Matter[72] documents the association between elevated $PM_{2.5}$ concentrations and adverse health effects, including increased premature mortality. This assessment, which was twice reviewed by the EPA's independent Science Advisory Board, concluded that the scientific literature consistently finds that a no-threshold model most adequately portrays the PM-mortality concentration-response relationship. Therefore, in this analysis, the EPA assumes that the health impact function for fine particles is without a threshold.

In general, we are more confident in the magnitude of the risks we estimate from simulated $PM_{2.5}$ concentrations that coincide with the bulk of the observed PM concentrations in the epidemiological studies that are used to estimate the benefits. Likewise, we are less confident in the risk we estimate from simulated $PM_{2.5}$ concentrations that fall below the bulk of the observed data in these studies. Concentration benchmark analyses (*e.g.,* lowest measured level (LML) or one standard deviation below the mean of the air quality data in the study) allow readers to determine the portion of population exposed to annual mean $PM_{2.5}$ levels at or above different concentrations, which provides some insight into the level of uncertainty in the estimated $PM_{2.5}$ mortality benefits. There are uncertainties inherent in identifying any particular point at which our confidence in reported associations becomes appreciably less and the scientific evidence provides no clear dividing line. However, the EPA does not view these concentration benchmarks as a concentration threshold below which we would not quantify health benefits of air quality improvements.

For this analysis, policy-specific air quality data are not available due to time or resource limitations and thus, we are unable to estimate the percentage of premature mortality associated with this specific rule's emission reductions at each $PM_{2.5}$ level. As a surrogate measure of mortality impacts, we provide the percentage of the population exposed at each $PM_{2.5}$ level using the source apportionment modeling used to calculate the benefit-per-ton estimates for this sector. Using the Krewski, *et al.* (2009) study, 93 percent of the population is exposed to annual mean $PM_{2.5}$ levels at or above the LML of 5.8 $\mu g/m^3$. Using the Lepeule, *et al.* (2012) study, 67 percent of the population is exposed above the LML of 8 $\mu g/m^3$. It is important to note that baseline exposure is only one parameter in the health impact function, along with baseline incidence rates population and change in air quality. Therefore, caution is warranted when interpreting the LML assessment for this rule because these results are not consistent with results from rules that had air quality modeling.

Every benefit analysis examining the potential effects of a change in environmental protection requirements is limited, to some extent, by data gaps, model capabilities (such as geographic coverage) and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Despite these uncertainties,

[67] Fann, N., K.R. Bakerand C.M. Fulcher. 2012. ''Characterizing the $PM_{2.5}$-related health benefits of emission reductions for 17 industrial, area and mobile emission sectors across the U.S.'' *Environment International* 49 41–151.

[68] U.S. Environmental Protection Agency (U.S. EPA). 2012. *Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter.* EPA–452/R–12–003. Office of Air Quality Planning and Standards, Health and Environmental Impacts Division. December. Available at *http://www.epa.gov/pm/2012/finalria.pdf.*

[69] U.S. Environmental Protection Agency. 2013. *Technical support document: Estimating the benefit per ton of reducing $PM_{2.5}$ precursors from 17 sectors.* Research Triangle Park, NC. January.

[70] Krewski, C.A., III, R.T. Burnett, M.J. Thun, E.E. Calle, D. Krewski, K. Itoand G.D. Thurston. 2002. ''Lung Cancer, Cardiopulmonary Mortality and Long-term Exposure to Fine Particulate Air Pollution.'' *Journal of the American Medical Association* 287:1132–1141.

[71] Lepeule J, Laden F, Dockery D, Schwartz J 2012. ''Chronic Exposure to Fine Particles and Mortality: An Extended Follow-Up of the Harvard Six Cities Study from 1974 to 2009.'' *Environ Health Perspect.* July;120(7):965–70.

[72] U.S. Environmental Protection Agency (U.S. EPA). 2009. *Integrated Science Assessment for Particulate Matter (Final Report).* EPA–600–R–08–139F. National Center for Environmental Assessment—RTP Division. December. Available on the Internet at <*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546*>.

we believe the benefit analysis for this proposed rule provides a reasonable indication of the expected health benefits of the rulemaking under a set of reasonable assumptions. This analysis does not include the type of detailed uncertainty assessment found in the 2012 $PM_{2.5}$ NAAQS RIA [73] because we lack the necessary air quality input and monitoring data to run the benefits model. In addition, we have not conducted air quality modeling for this proposed rule and using a benefit-per-ton approach adds another important source of uncertainty to the benefits estimates. The 2012 $PM_{2.5}$ NAAQS benefits analysis provides an indication of the sensitivity of our results to various assumptions.

It should be noted that the monetized co-benefits estimates provided above do not include benefits from several important benefit categories, including exposure to HAP, NO_X and ozone exposure, as well as ecosystem effects and visibility impairment. Although we do not have sufficient information or modeling available to provide monetized estimates for this proposed rule, we include a qualitative assessment of these unquantified benefits in the RIA for the rule.

The specific control technologies for the proposed rule are anticipated to have minor secondary impacts, including an increase of 28 tons of NO_X, less than 2 tons of PM, 3 tons of CO and 82 tons of SO_2 each year. Given the insignificant increase, only secondary effects of PM and SO_2 were included in the monetary evaluation of the actual benefits.

For more information on the benefits analysis, please refer to the RIA for this rule, ''Regulatory Impact Analysis: Proposed Brick and Structural Clay Products NESHAP,'' which is available in Docket ID No. EPA–HQ–OAR–2013–0291.

VIII. Public Participation and Request for Comment

We request comment on all aspects of the proposed rule for BSCP Manufacturing and Clay Ceramics Manufacturing, including any alternate approaches that the EPA is considering (see section IV.Q of this preamble for further discussion on these approaches).

During this rulemaking, we conducted outreach to small entities and convened a SBAR Panel to obtain advice and recommendation of representatives of the small entities that potentially would be subject to the requirements of the proposed BSCP manufacturing rule. (Note: We did not convene a SBAR Panel for the proposed Clay Ceramics manufacturing rule because none of the major source facilities subject to the proposed Clay Ceramics manufacturing rule are owned by a small entity.) As part of the SBAR Panel process, we conducted outreach with representatives from various small entities that would be affected by the proposed BSCP manufacturing rule. We met with these small entity representatives (SERs) to discuss the potential rulemaking approaches and potential options to decrease the impact of the BSCP manufacturing rulemaking on their industries/sectors. We distributed outreach materials to the SERs; these materials included background on the BSCP manufacturing rulemaking, possible regulatory approaches, preliminary cost and economic impacts and possible rulemaking alternatives. We met with SERs from the BSCP industry that will be impacted directly by the proposed BSCP manufacturing rule to discuss the outreach materials and receive feedback on the approaches and alternatives detailed in the outreach packet. The Panel received written comments from the SERs following the meeting in response to discussions at the meeting and the questions posed to the SERs by the agency. The SERs were specifically asked to provide comment on regulatory alternatives that could help to minimize the BSCP manufacturing rule's impact on small businesses. A copy of the final Panel report is available in Docket ID No. EPA–HQ–OAR–2013–0291.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more.'' Accordingly, the EPA submitted this action to OMB for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the dockets for this action.

In addition, the EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in ''Regulatory Impact Analysis: Proposed Brick and Structural Clay Products NESHAP.'' A copy of the analysis is available in the docket for the proposed BSCP manufacturing rule (Docket ID No. EPA–HQ–OAR–2013–0291) and the analysis is briefly summarized here.

The EPA's study estimates that affected BSCP facilities will incur total annualized costs of $21 million (2011 dollars) under the proposed BSCP manufacturing rule, including costs of emission controls, testing and monitoring, along with recordkeeping and reporting costs for facilities that have testing and monitoring. Total annualized costs for the alternate approach are estimated to be $31 million (2011 dollars). The EPA gathered information on firm sales and overall industry profitability for firms owning affected BSCP facilities. The EPA estimated that one to two BSCP manufacturing facilities are at significant risk of closure under the proposed standards. Under the alternate approach, the EPA estimated that two to six BSCP manufacturing facilities are at significant risk of closure.

The EPA also conducted an assessment of the benefits of the proposed rule, as described in section VII of this preamble. These estimates reflect the monetized human health benefits of reducing cases of morbidity and premature mortality among populations exposed to $PM_{2.5}$ reduced by this rule. Data, resource and methodological limitations prevented the EPA from monetizing the benefits from several important benefit categories, including benefits from reducing exposure to close to 450 tons of HAP each year for the proposed standards and exposure to as high as 740 tons of HAP each year through the alternate standards, as well as ecosystem effects and visibility impairment due to PM emissions. In addition to reducing emissions of PM precursors such as SO_2, this rule would reduce several non-Hg HAP metals emissions (*i.e.,* antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel and selenium) each year. The EPA estimates the total monetized co-benefits to be $52 million to $120 million (2011 dollars) at a 3 percent discount rate and $47 million to $110 million (2011 dollars) at a 7 percent discount rate on a yearly average in 2018 for the proposed standards.

Based on the EPA's examination of costs and benefits of the proposed BSCP

[73] U.S. Environmental Protection Agency (U.S. EPA). 2012. *Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter.* EPA–452/R–12–003. Office of Air Quality Planning and Standards, Health and Environmental Impacts Division. December. Available at *http://www.epa.gov/pm/2012/finalria.pdf.*

NESHAP, the EPA believes that the benefits of the proposed BSCP manufacturing rule will exceed the costs.

The EPA also examined the costs and economic impacts associated with the Clay Ceramics Manufacturing NESHAP. Only two firms are estimated to incur costs as a result of the proposed Clay Ceramics manufacturing rule and they only incur costs associated with testing, monitoring, recordkeeping and reporting. Total annualized costs are only $55,900 (2011 dollars) and both firms' estimated costs of complying with the proposed Clay Ceramics manufacturing rule are less than 0.001 percent of their sales.

B. Paperwork Reduction Act

The information collection requirements in the BSCP and Clay Ceramics proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The ICR document prepared by the EPA for the BSCP Manufacturing NESHAP has been assigned the EPA ICR number 2509.01. The ICR document prepared by the EPA for the Clay Ceramics Manufacturing NESHAP has been assigned the EPA ICR number 2510.01. The information requirements are based on notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to the EPA policies set forth in 40 CFR part 2, subpart B.

In addition to the notification, recordkeeping and reporting requirements in the NESHAP General Provisions, the proposed rule includes paperwork requirements associated with initial and 5-year repeat testing for selected process equipment, electronic reporting of performance test results, parameter monitoring, preparation of an OM&M plan, maintenance and inspection of process and control equipment, compliance with work practice standards and periods of malfunction.

There are 92 BSCP facilities that are currently major sources of HAP. An estimated 25 of these facilities are projected to become synthetic area sources by promulgation rather than comply with the BSCP standards. The remaining 67 facilities are expected to be subject to the proposed BSCP manufacturing rule. For these 67 facilities, the annual recordkeeping and reporting burden associated with the proposed BSCP standards (averaged over the first 3 years after the effective date of the standards) is estimated to be 15,063 labor hours per year, at a cost of $796,255/yr. No capital costs associated with monitoring, testing, recordkeeping or reporting are expected to be incurred during this period. The annual operating and maintenance costs are estimated to be $983/yr. The total burden for the federal government (averaged over the first 3 years after the effective date of the standards) is estimated to be 103 hours per year, at a total labor cost of $5,329 per year. (All costs are in 2011 dollars.) Burden is defined at 5 CFR 1320.3(b).

There are three clay ceramics facilities that are currently major sources of HAP and would be subject to the Clay Ceramics manufacturing rule that we are proposing. For these three facilities, the annual recordkeeping and reporting burden associated with the Clay Ceramics standards (averaged over the first 3 years after the effective date of the standards) is estimated to total 674 labor hours per year at a cost of $35,653/yr. As with the BSCP standards, no capital costs associated with monitoring, testing, recordkeeping or reporting are expected to be incurred during this period. The annual operating and maintenance costs are estimated to be $44/yr. The total burden for the federal government (averaged over the first 3 years after the effective date of the standards) is estimated to be 4.6 hours per year, at a total labor cost of $239 per year. (All costs are in 2011 dollars.)

Because BSCP and clay ceramics facilities are not required to come into full compliance with the standards until 3 years after promulgation, much of the respondent burden (*e.g.,* performance tests, inspections, notification of compliance status, compliance report, records of compliance data and malfunctions) does not occur until the fourth year following promulgation.

For the proposed BSCP manufacturing rule, we estimate an average annual recordkeeping and reporting burden of 31,805 labor hours per year, at a cost of $1,681,231/yr, for years 4 through 6. We also estimate annualized capital costs of $262,119/yr and annual operating and maintenance costs of $350,075/yr over this period, for a total annualized cost of $612,194/yr. The average annual burden for the federal government for years 4 through 6 is estimated to be 3,953 hours per year, at a total labor cost of $207,946 per year. (All costs are in 2011 dollars.)

For the proposed Clay Ceramics manufacturing rule, we estimate an average annual recordkeeping and reporting burden of 1,448 labor hours per year, at a cost of $76,519/yr, for years 4 through 6. We also estimate annualized capital costs of $27,368/yr and annual operating and maintenance costs of $21,101/yr over this period, for a total annualized cost of $48,469/yr. The average annual burden for the federal government for years 4 through 6 is estimated to be 180 hours per year, at a total labor cost of $9,448 per year. (All costs are in 2011 dollars.)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, the EPA has established a public docket for each rule, which includes this ICR, under Docket ID No. EPA–HQ–OAR–2013–0291 (for the BSCP Manufacturing NESHAP) and Docket ID No. EPA–HQ–OAR–2013–0290 (for the Clay Ceramics Manufacturing NESHAP). Submit any comments related to the ICR to the EPA and OMB. See the **ADDRESSES** section at the beginning of this action for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 18, 2014, a comment to OMB is best assured of having its full effect if OMB receives it by January 20, 2015. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA's) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; 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. Small entities affected by the proposed BSCP NESHAP are small businesses that own BSCP manufacturing facilities. Affected parent companies fall under the Clay Building Material and Refractories Manufacturing (NAICS 327120) industry and the SBA (2013) defines a small business in this industry as a firm with fewer than 750 employees. Of 44 parent companies owning BSCP facilities, there are 36 parent companies that are small businesses. Small entities affected by the proposed Clay Ceramics NESHAP are small businesses that own clay ceramics manufacturing facilities. Affected parent companies of ceramic tile facilities fall under the Clay Building Material and Refractories Manufacturing (NAICS 327120) industry and affected parent companies of sanitaryware facilities fall under the Pottery, Ceramics, and Plumbing Fixture Manufacturing (NAICS 327110) industry. However, we have determined that no small entities would be subject to the clay ceramics proposed standards.

Pursuant to section 603 of the RFA, the EPA prepared an IRFA that examines the impact of the proposed BSCP manufacturing rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA is included in Section 5 of the RIA and is available for review in the docket for the proposed BSCP manufacturing rule (Docket ID No. EPA–HQ–OAR–2013–0291) and is summarized below.

1. Need for the Rule

The EPA is required under CAA section 112(d) to establish emission standards for each category or subcategory of major and area sources of HAP listed for regulation in section 112(b). These standards are applicable to new or existing sources of HAP and shall require the maximum degree of emission reduction. In the Administrator's judgment, the pollutants emitted from BSCP manufacturing facilities cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health. Consequently, NESHAP for the BSCP source category are being proposed.

2. Objectives and Legal Basis for the Rule

Section 112(d) of the CAA requires the EPA to set emissions standards for HAP emitted by major stationary sources based on the performance of the MACT. The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources (for which the Administrator has emissions information) or the best performing five sources for source categories with less than 30 sources (CAA section 112(d)(3)(A) and (B)). For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar source (CAA section 112(d)(3)). The EPA also must consider more stringent ''beyond-the-floor'' control options. When considering beyond-the-floor options, the EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy and nonair environmental impacts when doing so. This rule is being proposed to comply with CAA section 112(d).

3. Affected Small Entities

Of 44 parent companies owning BSCP facilities, 36 parent companies are small businesses. The EPA computed the ratio of estimated compliance costs to company sales (cost-to-sales ratio) to measure the magnitude of potential impacts on small companies. Under the proposed standards, the EPA estimated that one to two small brick manufacturing facilities are at significant risk of closure. Under the alternate approach, two to five small brick manufacturing facilities are at significant risk of closure.

4. Reporting, Recordkeeping, and Other Compliance Requirements

Respondents would be required to provide one-time and periodic notifications, including initial notification, notification of performance tests, and notification of compliance status. Respondents would also be required to submit semiannual reports documenting compliance with the rule and detailing any compliance issues, and they would be required to submit the results of performance tests to the EPA's ERT. Respondents would be required to keep documentation supporting information included in these notifications and reports, as well as records of the operation and maintenance of affected sources and APCD at the facility.

5. Related Federal Rules

The EPA determined that there are no related federal rules for this source category.

6. Significant Alternatives

The EPA has included provisions in the proposed rule where possible to minimize the burden on all affected entities, including small entities. As required by section 609(b) of the RFA, as amended by Small Business Regulatory Enforcement Fairness Act (SBREFA), the EPA also conducted outreach to small entities and convened a SBAR Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the proposed BSCP manufacturing rule's requirements. Seventeen SERs associated with brick manufacturing participated. On June 26, 2013, the SBAR Panel held an outreach meeting/teleconference with the SERs. In addition to the materials that the SERs received for the pre-Panel outreach, the SERs were provided with background information to help them prepare for the teleconference and prepare their comments on the proposed rulemaking.

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to elements of the IRFA. A copy of the Panel report is included in the docket for the proposed BSCP manufacturing rule (Docket ID No. EPA–HQ–OAR–2013–0291).

The SBAR made several recommendations to enhance flexibility for small businesses complying with the proposed BSCP manufacturing rule. The EPA adopted the panel recommendations to the extent feasible, as described below:

- The panel recommended that the EPA propose work practices for dioxin and take comment on the feasibility of work practice standards for Hg and other metals. The discussion of work practices for Hg and other metals should clearly identify any areas where the agency believes that the data do not support work practices to allow for meaningful comments and also discuss work practice alternatives with sufficient specificity that they can be fully considered as an alternative in the final BSCP manufacturing rule.

Proposed rule: The EPA is proposing work practices for dioxin/furan. Although the EPA is proposing emission limits for Hg and for non-Hg HAP metals, the EPA is specifically

requesting comment in the proposal on whether or not work practice standards for non-Hg HAP metals and for Hg are appropriate.

• The panel recommended that the EPA co-propose both a health-based limit and MACT limits for acid gases unless the EPA determines it lacks sufficient information to propose a numerical health-based limit.

Proposed rule: The EPA is proposing a health-based emission limit for acid gases in lieu of MACT limits.

• The panel recommended that the EPA propose separate subcategories for kilns based on size if it reduces the financial impact and that the EPA should take comment and solicit data on subcategorization based on raw materials, fuels and other factors.

Proposed rule: The EPA evaluated the data to determine if subcategories of sources were supported, including subcategories by kiln size. As a result, the EPA is proposing emission limits for Hg in two subcategories based on kiln size (large, small). However, although the EPA has the discretion to subcategorize by kiln size, the EPA determined it was not necessary to exercise this discretion for all pollutants, including total non-Hg HAP metals. Instead, the EPA is proposing a choice of emission limits for PM or total non-Hg HAP metals for all tunnel kilns. The ability to comply with the equivalent lb/hr total non-Hg HAP metals limit provides additional flexibility for small tunnel kilns and tunnel kilns with a low metals content in the PM emissions.

• The panel recommended that the EPA specifically request information, at proposal, on how the presence of sawdust dryers would affect emissions and control costs.

Proposed rule: The proposed rule requests comment on whether the EPA should create a subcategory for kilns fired with sawdust (with or without a sawdust dryer).

• The panel recommended that the EPA propose work practice standards for startup and shutdown.

Proposed rule: The EPA is proposing work practice standards for periods of startup and shutdown for tunnel kilns.

• The panel recommended that the EPA set the floor based on 12 percent of the entire source category if the EPA can establish that the data available to the agency represent the best-performing sources consistent with section 112 of the CAA and relevant case law.

Proposed rule: The test data for PM (the surrogate for total non-Hg HAP metals) showed that kilns controlled with a FF-based APCD (*e.g.,* DIFF, DLS/FF) are the better performers and at least 12 percent of the kilns in the industry are controlled with a FF-based APCD. Therefore, the MACT limit is based on the top 12 percent of the kilns in the industry (*i.e.,* the best-performing sources with a FF-based APCD). However, the EPA was unable to establish that the data available to the agency represented the best-performing sources for Hg control. Therefore, the MACT limit for Hg is based upon the top 12 percent of sources for which we had test data.

We invite comments on all aspects of the proposal and its impacts on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. This action does not contain a federal mandate that may result in expenditures of $100 million or more for state, local or tribal governments, in the aggregate, or the private sector in any 1 year. This action is not expected to impact state, local or tribal governments. The nationwide annual cost to the affected industry is estimated to be $19.0 million per year for the proposed BSCP manufacturing rule and $54,100 per year for the proposed Clay Ceramics manufacturing rule (2011 dollars). Thus, 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. It contains no requirements that apply to such governments, nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the facilities subject to this action are owned or operated by state governments and nothing in this proposal will supersede state regulations. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. The action imposes requirements on owners and operators of BSCP and clay ceramics manufacturing facilities and not tribal governments. Although Executive Order 13175 does not apply to this action, the EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance. Nevertheless, this action will result in reductions in emissions of HF, HCl, Cl_2, dioxins/furans and Hg and other metals, which will provide some increased protection of health for people of all ages including children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action will not adversely directly affect productivity, competition or prices in the energy sector.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note), directs the EPA to use voluntary consensus

standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, 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 VCS.

This proposed rulemaking involves technical standards. The EPA proposes to use the following four VCS as acceptable alternatives to the EPA test methods for the purpose of this rule. ANSI/ASME PTC 19–10–1981, Part 10, ''Flue and Exhaust Gas Analyses,'' is acceptable as an alternative to Method 3A and 3B for the manual procedures only and not the instrumental procedures. ASTM D6735–01 (Reapproved 2009), ''Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method,'' is acceptable as an alternative to Methods 26 and 26A.

ASTM D6784–02 (Reapproved 2008), ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),'' is acceptable as an alternative to Method 29 (portion for Hg only).

ASTM D6348–03 (Reapproved 2010), ''Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy,'' is acceptable as an alternative to Method 320 with the following conditions: (1) the test plan preparation and implementation in the Annexes to ASTM D 6348–03, Sections A1 through A8 are mandatory; and (2) in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5). In order for the test data to be acceptable for a compound, %R must be greater than or equal to 70 percent and less than or equal to 130 percent. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report and all field measurements must be corrected with the calculated %R value for that compound by using the following equation: Reported Result = (Measured Concentration in the Stack × 100)/%R.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in one or both of these regulations.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority, low income or indigenous populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low income or indigenous populations. The proposed rule establishes national standards that will result in reductions in emissions of HF, HCl, Cl_2, dioxins/furans and Hg and other metals to which all affected populations are exposed. Thus the proposed rule is projected to have positive, not adverse, impacts on human health and the environment.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 20, 2014.

Gina McCarthy,

Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Section 63.14 is amended by:
■ a. Revising paragraphs (f)(1), (g)(74) and (84);
■ b. Adding paragraph (g)(95); and
■ c. Revising paragraph (l)(2).

The revisions and addition read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(f) * * *

(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, table 4 to subpart KKKKK, tables 4 and 5 of subpart UUUUU, and table 1 to subpart ZZZZZ.

* * * * *

(g) * * *

(74) 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 table 4 to subpart JJJJJ, table 4 to subpart KKKKK, tables 1, 2, and 5 to subpart UUUUU, and appendix B to subpart UUUUU.

* * * * *

(84) 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 JJJJJ, table 4 to subpart KKKKK, table 4 to subpart JJJJJJ, table 5 to subpart UUUUU, and appendix A to subpart UUUUU.

* * * * *

(95) ASTM D6735–01 (Reapproved 2009), Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining

Exhaust Sources—Impinger Method, IBR approved for table 4 to subpart JJJJJ and table 4 to subpart KKKKK.

* * * * *

(l) * * *

(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), 63.8450(e), 63.8600(e), and 63.11224(f).

■ 3. Subchapter C is amended by revising subpart JJJJJ to read as follows:

Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing

Sec.

What This Subpart Covers

63.8380 What is the purpose of this subpart?
63.8385 Am I subject to this subpart?
63.8390 What parts of my plant does this subpart cover?
63.8395 When do I have to comply with this subpart?

Emission Limitations and Work Practice Standards

63.8405 What emission limitations and work practice standards must I meet?
63.8410 What are my options for meeting the emission limitations and work practice standards?

General Compliance Requirements

63.8420 What are my general requirements for complying with this subpart?
63.8425 What do I need to know about operation, maintenance, and monitoring plans?

Testing and Initial Compliance Requirements

63.8435 By what date must I conduct performance tests?
63.8440 When must I conduct subsequent performance tests?
63.8445 How do I conduct performance tests and establish operating limits?
63.8450 What are my monitoring installation, operation, and maintenance requirements?
63.8455 How do I demonstrate initial compliance with the emission limitations and work practice standards?

Continuous Compliance Requirements

63.8465 How do I monitor and collect data to demonstrate continuous compliance?
63.8470 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

Notifications, Reports, and Records

63.8480 What notifications must I submit and when?
63.8485 What reports must I submit and when?
63.8490 What records must I keep?
63.8495 In what form and for how long must I keep my records?

Other Requirements and Information

63.8505 What parts of the General Provisions apply to me?
63.8510 Who implements and enforces this subpart?
63.8515 What definitions apply to this subpart?

Tables to Subpart JJJJJ of Part 63

Table 1 to Subpart JJJJJ of Part 63—Emission Limits
Table 2 to Subpart JJJJJ of Part 63—Operating Limits
Table 3 to Subpart JJJJJ of Part 63—Work Practice Standards
Table 4 to Subpart JJJJJ of Part 63—Requirements for Performance Tests
Table 5 to Subpart JJJJJ of Part 63—Initial Compliance with Emission Limitations and Work Practice Standards
Table 6 to Subpart JJJJJ of Part 63—Continuous Compliance with Emission Limitations and Work Practice Standards
Table 7 to Subpart JJJJJ of Part 63—Requirements for Reports
Table 8 to Subpart JJJJJ of Part 63—Applicability of General Provisions to Subpart JJJJJ

What This Subpart Covers

§ 63.8380 What is the purpose of this subpart?

This subpart establishes national emission limitations for hazardous air pollutants (HAP) emitted from brick and structural clay products (BSCP) manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.8385 Am I subject to this subpart?

You are subject to this subpart if you own or operate a BSCP manufacturing facility that is, is located at, or is part of, a major source of HAP emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A BSCP manufacturing facility is a plant site that manufactures brick (including, but not limited to, face brick, structural brick, and brick pavers); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products. Brick and structural clay products manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes.

(b) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.8390 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at a BSCP manufacturing facility.

(b) For the purposes of this subpart, the affected sources are described in paragraphs (b)(1) and (2).

(1) All tunnel kilns at a BSCP manufacturing facility are an affected source. For the remainder of this subpart, a tunnel kiln with a design capacity equal to or greater than 9.07 megagrams per hour (Mg/hr) (10 tons per hour (tph)) of fired product will be called a large tunnel kiln, and a tunnel kiln with a design capacity less than 9.07 Mg/hr (10 tph) of fired product will be called a small tunnel kiln.

(2) Each periodic kiln is an affected source.

(c) Process units not subject to the requirements of this subpart are listed in paragraphs (c)(1) through (3) of this section.

(1) Kilns that are used exclusively for setting glazes on previously fired products are not subject to the requirements of this subpart.

(2) Raw material processing and handling.

(3) Dryers.

(d) A source is a new affected source if construction of the affected source began after December 18, 2014, and you met the applicability criteria at the time you began construction.

(e) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.8395 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is after December 18, 2014 but before [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the applicable emission limitations and work practice standards in Tables 1, 2, and 3 to this subpart no later than [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your affected source is after [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the applicable emission limitations and work practice standards in Tables 1, 2, and 3 to this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the applicable emission limitations and work practice standards in Tables 1, 2, and 3 to this subpart no later than [DATE 3 YEARS AND 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP by adding a new affected source or by reconstructing, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(d) If you have a new area source (*i.e.,* an area source for which construction or reconstruction commenced after December 18, 2014) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(e) You must meet the notification requirements in § 63.8480 according to the schedule in § 63.8480 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations and Work Practice Standards

§ 63.8405 What emission limitations and work practice standards must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

(c) You must meet each work practice standard in Table 3 to this subpart that applies to you.

§ 63.8410 What are my options for meeting the emission limitations and work practice standards?

(a) To meet the emission limitations in Tables 1 and 2 to this subpart, you must use one or more of the options listed in paragraphs (a)(1) and (2) of this section.

(1) *Emissions control system.* Use an emissions capture and collection system and an air pollution control device (APCD) and demonstrate that the resulting emissions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(2) *Process changes.* Use low-HAP raw materials or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart.

(b) To meet the work practice standards for affected periodic kilns, you must comply with the requirements listed in Table 3 to this subpart.

(c) To meet the work practice standards for dioxins/furans for affected tunnel kilns, you must comply with the requirements listed in Table 3 to this subpart.

(d) To meet the work practice standards for affected tunnel kilns during periods of startup and shutdown, you must comply with the requirements listed in Table 3 to this subpart.

General Compliance Requirements

§ 63.8420 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of routine control device maintenance as specified in paragraph (d) of this section.

(b) Except as specified in paragraph (d) of this section, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source. During the period between the compliance date specified for your affected source in § 63.8395 and the date upon which continuous monitoring systems (CMS) (*e.g.,* continuous parameter monitoring systems) have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) For each affected kiln that is subject to the emission limits specified in Table 1 to this subpart, you must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.8425.

(d) If you own or operate an affected kiln that is subject to the emission limits specified in Table 1 to this subpart and must perform routine maintenance on the control device for that kiln, you may bypass the kiln control device and continue operating the kiln upon approval by the Administrator provided you satisfy the conditions listed in paragraphs (d)(1) through (5) of this section.

(1) You must request a routine control device maintenance exemption from the Administrator. Your request must justify the need for the routine maintenance on the control device and the time required to accomplish the maintenance activities, describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during kiln shutdowns, describe how you plan to minimize emissions to the greatest extent possible during the maintenance, and provide any other documentation required by the Administrator.

(2) The routine control device maintenance exemption must not exceed 4 percent of the annual operating uptime for each kiln.

(3) The request for the routine control device maintenance exemption, if approved by the Administrator, must be incorporated by reference in and attached to the affected source's title V permit.

(4) You must minimize HAP emissions during the period when the kiln is operating and the control device is offline.

(5) You must minimize the time period during which the kiln is operating and the control device is offline.

(e) You must be in compliance with the work practice standards in this subpart at all times.

(f) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 8 to this subpart.

§ 63.8425 What do I need to know about operation, maintenance, and monitoring plans?

(a) For each affected kiln that is subject to the emission limits specified in Table 1 to this subpart, you must prepare, implement, and revise as necessary an OM&M plan that includes the information in paragraph (b) of this section. Your OM&M plan must be available for inspection by the permitting authority upon request.

(b) Your OM&M plan must include, as a minimum, the information in paragraphs (b)(1) through (13) of this section.

(1) Each process and APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits for each parameter that represent continuous compliance with the emission limitations in § 63.8405. The limits must be based on values of the monitored parameters recorded during performance tests.

(4) Procedures for the proper operation and routine and long-term maintenance of each APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(5) Procedures for installing the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last APCD).

(6) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(7) Continuous monitoring system performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(8) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8450 and 63.8(c)(1), (3), (7), and (8).

(9) Continuous monitoring system data quality assurance procedures consistent with the requirements in § 63.8(d).

(10) Continuous monitoring system recordkeeping and reporting procedures consistent with the requirements in §§ 63.8485 and 63.8490.

(11) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (b)(11)(i) through (iii) of this section.

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions necessary for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended and corrective actions were initiated and completed.

(12) Procedures for keeping records to document compliance.

(13) If you operate an affected kiln and you plan to take the kiln control device out of service for routine maintenance, as specified in § 63.8420(d), the procedures specified in paragraphs (b)(13)(i) and (ii) of this section.

(i) Procedures for minimizing HAP emissions from the kiln during periods of routine maintenance of the kiln control device when the kiln is operating and the control device is offline.

(ii) Procedures for minimizing the duration of any period of routine maintenance on the kiln control device when the kiln is operating and the control device is offline.

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance tests to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.8435 By what date must I conduct performance tests?

For each affected kiln that is subject to the emission limits specified in Table 1 to this subpart, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8395 and according to the provisions in § 63.7(a)(2).

§ 63.8440 When must I conduct subsequent performance tests?

(a) For each affected kiln that is subject to the emission limits specified in Table 1 to this subpart, you must conduct a performance test before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

§ 63.8445 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 4 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and calibrate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart.

(d) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(e) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(f) You must use the data gathered during the performance test and the equations in paragraphs (f)(1) and (2) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the production-based particulate matter (PM) and mercury (Hg) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of production for each test run using Equation 1 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 1)}$$

Where:
MP = mass per unit of production, kilograms (pounds) of pollutant per megagram (ton) of fired product
ER = mass emission rate of pollutant (PM or Hg) during each performance test run, kilograms (pounds) per hour
P = production rate during each performance test run, megagrams (tons) of fired product per hour.

(2) To determine compliance with the health-based standard for acid gas HAP for BSCP manufacturing facilities in Table 1 to this subpart, you must:

(i) Calculate the HCl-equivalent emissions for HF, HCl, and Cl_2 for each tunnel kiln at your facility using Equation 2 of this section:

$$E_i = E_{HCl} + \left[E_{HF} \left(\frac{RfC_{HCl}}{RfC_{HF}} \right) \right] + \left[E_{Cl_2} \left(\frac{RfC_{HCl}}{RfC_{Cl_2}} \right) \right] \quad \text{(Eq. 2)}$$

Where:
E_i = HCl-equivalent emissions for kiln i, kilograms (pounds) per hour
E_{HCl} = emissions of HCl, kilograms (pounds) per hour
E_{HF} = emissions of HF, kilograms (pounds) per hour
E_{Cl2} = emissions of Cl_2, kilograms (pounds) per hour
RfC_{HCl} = reference concentration for HCl, 20 micrograms per cubic meter
RfC_{HF} = reference concentration for HF, 14 micrograms per cubic meter
RfC_{Cl2} = reference concentration for chlorine, 0.15 micrograms per cubic meter

(ii) If you have multiple tunnel kilns at your facility, sum the HCl-equivalent values for all tunnel kilns at the facility using Equation 3 of this section:

$$E_{total} = \sum_{i=1}^{n} E_i \quad \text{(Eq. 3)}$$

Where:
E_{total} = HCl-equivalent emissions for total of all kilns at facility, kilograms (pounds) per hour
E_i = HCl-equivalent emissions for kiln i, kilograms (pounds) per hour
n = number of tunnel kilns at facility

(iii) Compare this value to the health-based standard in Table 1 to this subpart.

(g) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you as specified in paragraph (g)(1) of this section and in Table 4 to this subpart.

(1)(i) If you do not have an APCD installed on your kiln, calculate the maximum potential HCl-equivalent emissions for HF, HCl, and Cl_2 for each tunnel kiln at your facility using Equation 4 of this section:

$$E_{\max i} = (Cap_i) \left[(MP_{iHCl}) + (MP_{iHF}) \left(\frac{RfC_{HCl}}{RfC_{HF}} \right) + (MP_{iCl_2}) \left(\frac{RfC_{HCl}}{RfC_{Cl_2}} \right) \right] \quad \text{(Eq. 4)}$$

Where:
$E_{max\ i}$ = maximum potential HCl-equivalent emissions for kiln i, kilograms (pounds) per hour
Cap_i = design capacity for kiln i, megagrams (tons) of fired product per hour
MP_{iHCl} = mass of HCl per unit of production for kiln i, kilograms (pounds) of HCl per megagram (ton) of fired product
MP_{iHF} = mass of HF per unit of production for kiln i, kilograms (pounds) of HF per megagram (ton) of fired product
MP_{iCl2} = mass of Cl_2 per unit of production for kiln i, kilograms (pounds) of Cl_2 per megagram (ton) of fired product
RfC_{HCl} = reference concentration for HCl, 20 micrograms per cubic meter
RfC_{HF} = reference concentration for HF, 14 micrograms per cubic meter
RfC_{Cl2} = reference concentration for Cl_2, 0.15 micrograms per cubic meter

(ii) If you have multiple tunnel kilns at your facility, sum the maximum potential HCl-equivalent values for all tunnel kilns at the facility using Equation 5 of this section:

$$E_{\max total} = \sum_{i=1}^{n} E_{\max i} \quad \text{(Eq. 5)}$$

Where:
$E_{max\ total}$ = maximum potential HCl-equivalent emissions for total of all kilns at facility, kilograms (pounds) per hour
$E_{max\ i}$ = maximum potential HCl-equivalent emissions for kiln i, kilograms (pounds) per hour
n = number of tunnel kilns at facility

(iii) If you have a single tunnel kiln at your facility and the total facility maximum potential HCl-equivalent emissions ($E_{max\ total}$) are greater than the HCl-equivalent limit in Table 1 to this subpart, determine the maximum process rate for the tunnel kiln using Equation 6 of this section that would ensure the total facility maximum potential HCl-equivalent emissions remain at or below the HCl-equivalent limit. The maximum process rate would become your operating limit for process rate and must be included in your OM&M plan.

$$P_{\max i} = \frac{HCl\text{-}eq}{\left[\left(MP_{iHCl}\right) + \left(MP_{iHF}\right)\left(\frac{RfC_{HCl}}{RfC_{HF}}\right) + \left(MP_{iCl_2}\right)\left(\frac{RfC_{HCl}}{RfC_{Cl_2}}\right)\right]} \quad \text{(Eq. 6)}$$

Where:

$P_{max\ i}$ = maximum process rate for kiln i, megagrams (tons) per hour

HCl-eq = HCl-equivalent limit in Table 1 to this subpart, 26 kilograms (57 pounds) per hour

MP_{iHCl} = mass of HCl per unit of production for kiln i, kilograms (pounds) of HCl per megagram (ton) of fired product

MP_{iHF} = mass of HF per unit of production for kiln i, kilograms (pounds) of HF per megagram (ton) of fired product

MP_{iCl2} = mass of Cl_2 per unit of production for kiln i, kilograms (pounds) of Cl_2 per megagram (ton) of fired product

RfC_{HCl} = reference concentration for HCl, 20 micrograms per cubic meter

RfC_{HF} = reference concentration for HF, 14 micrograms per cubic meter

RfC_{Cl2} = reference concentration for Cl_2, 0.15 micrograms per cubic meter

(iv) If you have multiple tunnel kilns at your facility and the total facility maximum potential HCl-equivalent emissions ($E_{max\ total}$) are greater than the HCl-equivalent limit in Table 1 to this subpart, determine the combination of maximum process rates that would ensure that total facility maximum potential HCl-equivalent remains at or below the HCl-equivalent limit. The maximum process rates would become your operating limits for process rate and must be included in your OM&M plan.

(h) For each affected kiln that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (h)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (h)(1)(i) through (iv) of this section.

(i) A description of the alternative APCD or process changes.

(ii) The type of monitoring device or procedure that will be used.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(2) Establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring procedures request and, as applicable, as specified in Table 4 to this subpart.

§ 63.8450 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (5) of this section.

(1) Conduct a performance evaluation of each CMS according to your OM&M plan.

(2) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption as specified in § 63.8420(d)).

(3) Determine and record the 3-hour block averages of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours. To calculate the average for each 3-hour average period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption as specified in § 63.8420(d)).

(4) Record the results of each inspection, calibration, and validation check.

(5) At all times, maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(b) For each liquid flow measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (b)(1) through (3) of this section.

(1) Locate the flow sensor in a position that provides a representative flowrate.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the liquid flowrate.

(3) At least semiannually, conduct a flow sensor calibration check.

(c) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (c)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check the pressure tap daily to ensure that it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating pressure range, conduct calibration checks or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each pH measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (d)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(e) For each bag leak detection system, you must meet the requirements in paragraphs (e)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997) (incorporated by reference, see § 63.14). Other types of

bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997) (incorporated by reference, see § 63.14).

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in your OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection that demonstrates that the fabric filter is in good operating condition, as defined in section 5.2 of the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997) (incorporated by reference, see § 63.14). Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(f) For each lime, chemical, or carbon feed rate measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (f)(1) and (2) of this section.

(1) Locate the measurement device in a position that provides a representative feed rate measurement.

(2) At least semiannually, conduct a calibration check.

(g) For each limestone feed system on a dry limestone adsorber (DLA), you must meet the requirements in paragraphs (a)(1), (4), and (5) of this section and must ensure on a monthly basis that the feed system replaces limestone at least as frequently as the schedule set during the performance test.

(h) Requests for approval of alternate monitoring procedures must meet the requirements in §§ 63.8445(h) and 63.8(f).

§ 63.8455 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to Table 5 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8445 and Table 4 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8480(e).

Continuous Compliance Requirements

§ 63.8465 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, malfunction, and routine control device maintenance as specified in § 63.8420(d) when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities for purposes of calculating data averages. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the valid data collected during all other periods in assessing compliance. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation from the monitoring requirements.

§ 63.8470 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit, operating limit, and work practice standard in Tables 1, 2, and 3 to this subpart that applies to you according to the methods specified in Table 6 to this subpart.

(b) For each affected kiln that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart, or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart, and each operating limit established as required in § 63.8445(h)(2) according to the methods specified in your approved alternative monitoring procedures request, as described in §§ 63.8445(h)(1) and 63.8(f).

(c) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, malfunction, and routine control device maintenance. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8485.

(d) Deviations that occur during periods of control device maintenance covered by an approved routine control device maintenance exemption according to § 63.8420(d) are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the approved routine control device maintenance exemption.

(e) You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for visible emissions (VE) from tunnel kilns that are uncontrolled or equipped with DLA, dry lime injection fabric filter (DIFF), dry lime scrubber/fabric filter (DLS/FF), or other dry control device by monitoring VE at each kiln stack

according to the requirements in paragraphs (e)(1) through (3) of this section.

(1) Perform daily VE observations of each kiln stack according to the procedures of Method 22 of 40 CFR part 60, appendix A–7. You must conduct the Method 22 test while the affected source is operating under normal conditions. The duration of each Method 22 test must be at least 15 minutes.

(2) If VE are observed during any daily test conducted using Method 22 of 40 CFR part 60, appendix A–7, you must promptly initiate and complete corrective actions according to your OM&M plan. If no VE are observed in 30 consecutive daily Method 22 tests for any kiln stack, you may decrease the frequency of Method 22 testing from daily to weekly for that kiln stack. If VE are observed during any weekly test, you must promptly initiate and complete corrective actions according to your OM&M plan, resume Method 22 testing of that kiln stack on a daily basis, and maintain that schedule until no VE are observed in 30 consecutive daily tests, at which time you may again decrease the frequency of Method 22 testing to a weekly basis.

(3) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A–7, you must report these deviations by following the requirements in § 63.8485.

Notifications, Reports, and Records

§ 63.8480 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e), (g)(1), and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(2), if you start up your new or reconstructed affected source on or after [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 5 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) through (3) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) and (ii) of this section in your Notification of Compliance Status.

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) For each APCD that includes a fabric filter, if a bag leak detection system is used, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.8450(e).

(3) For each compliance demonstration required in Table 5 to this subpart that does not include a performance test (*i.e.,* compliance demonstrations for the work practice standards), you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the compliance demonstrations.

(f) If you request a routine control device maintenance exemption according to § 63.8420(d), you must submit your request for the exemption no later than 30 days before the compliance date.

§ 63.8485 What reports must I submit and when?

(a) You must submit each report in Table 7 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 7 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8395 and ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) A description of control device maintenance performed while the control device was offline and the kiln controlled by the control device was operating, including the information specified in paragraphs (c)(4)(i) through (iii) of this section.

(i) The date and time when the control device was shut down and restarted.

(ii) Identification of the kiln that was operating and the number of hours that the kiln operated while the control device was offline.

(iii) A statement of whether or not the control device maintenance was

included in your approved routine control device maintenance exemption developed as specified in § 63.8420(d). If the control device maintenance was included in your approved routine control device maintenance exemption, then you must report the information in paragraphs (c)(4)(iii)(A) through (C) of this section.

(A) The total amount of time that the kiln controlled by the control device operated during the current semiannual compliance period and during the previous semiannual compliance period.

(B) The amount of time that each kiln controlled by the control device operated while the control device was offline for maintenance covered under the routine control device maintenance exemption during the current semiannual compliance period and during the previous semiannual compliance period.

(C) Based on the information recorded under paragraphs (c)(4)(iii)(A) and (B) of this section, compute the annual percent of kiln operating uptime during which the control device was offline for routine maintenance using Equation 1 of this section.

$$RM = \frac{DT_p + DT_c}{KU_p + KU_c}(100) \qquad \text{(Eq. 1)}$$

Where:

RM = Annual percentage of kiln uptime during which control device was offline for routine control device maintenance

DT_p = Control device downtime claimed under the routine control device maintenance exemption for the previous semiannual compliance period

DT_c = Control device downtime claimed under the routine control device maintenance exemption for the current semiannual compliance period

KU_p = Kiln uptime for the previous semiannual compliance period

KU_c = Kiln uptime for the current semiannual compliance period

(5) A report of the most recent burner tune-up conducted to comply with the dioxin/furan work practice standard in Table 3 to this subpart.

(6) If there are no deviations from any emission limitations (emission limits or operating limits) that apply to you, the compliance report must contain a statement that there were no deviations from the emission limitations during the reporting period.

(7) If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and (d)(1) through (3) of this section. This includes periods of startup, shutdown, and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period and identification of the sources for which there was a deviation.

(2) Information on the number, date, time, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(3) The applicable operating limit or work practice standard from which you deviated and either the parameter monitor reading during the deviation or a description of how you deviated from the work practice standard.

(e) For each deviation from an emission limitation (emission limit or operating limit) occurring at an affected source where you are using a CMS to comply with the emission limitations in this subpart, you must include the information in paragraphs (c)(1) through (4) and (e)(1) through (13) of this section. This includes periods of startup, shutdown, and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period and identification of the sources for which there was a deviation.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the pertinent information in your OM&M plan.

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during routine control device maintenance covered in your approved routine control device maintenance exemption or during another period, and the cause of each deviation (including unknown cause, if applicable).

(5) An estimate of the quantity of each regulated pollutant emitted over the emission limit during the deviation, and a description of the method used to estimate the emissions.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CMS.

(12) The date of the latest CMS certification or audit.

(13) A description of any changes in CMS, processes, or control equipment since the last reporting period.

(f) If a malfunction occurred during the reporting period, the compliance report must contain the information in paragraphs (c)(1) through (4) and (f)(1) and (2) of this section.

(1) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded.

(2) A description of actions taken by an owner or operator during a malfunction of an affected facility to minimize emissions in accordance with § 63.8420(b), including actions taken to correct a malfunction.

(g) If you have obtained a title V operating permit according to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 7 to this subpart along with, or as part of, the semiannual monitoring report

required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permitting authority.

(h) Within 60 days after the date of completing each performance test (as defined in § 63.2) as required by this subpart, you must submit the results of the performance test following the procedure specified in either paragraph (h)(1) or (2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*http://www.epa.gov/ttn/chief/ert/index.html*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*http://cdx.epa.gov/epa_home.asp*).) Performance test data must be submitted in a file format generated through the use of the EPA's ERT. Instead of submitting performance test data in a file format generated through the use of the EPA's ERT, you may submit an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT (or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site once the XML schema is available), including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file (or alternate file) with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

§ 63.8490 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests as required in § 63.10(b)(2)(viii).

(3) Records relating to control device maintenance and documentation of your approved routine control device maintenance exemption, if you request such an exemption under § 63.8420(d).

(b) You must keep the records required in Table 6 to this subpart to show continuous compliance with each emission limitation and work practice standard that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (11) of this section.

(1) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(2) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation, actions taken to minimize emissions in accordance with § 63.8420(b) and the corrective action taken to return the affected unit to its normal or usual manner of operation, and whether the deviation occurred during a period of startup, shutdown, or malfunction. Record and retain a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) For each affected source, records of production rates on a fired-product basis.

(4) Records for any approved alternative monitoring or test procedures.

(5) Records of maintenance and inspections performed on the APCD.

(6) Current copies of your OM&M plan, including any revisions, with records documenting conformance.

(7) Logs of the information required in paragraphs (c)(7)(i) through (iii) of this section to document proper operation of your periodic kiln.

(i) Records of the firing time and temperature cycle for each product produced in each periodic kiln. If all periodic kilns use the same time and temperature cycles, one copy may be maintained for each kiln. Reference numbers must be assigned to use in log sheets.

(ii) For each periodic kiln, a log that details the type of product fired in each batch, the corresponding time and temperature protocol reference number, and an indication of whether the appropriate time and temperature cycle was fired.

(iii) For each periodic kiln, a log of the actual tonnage of product fired in the periodic kiln and an indication of whether the tonnage was below the maximum tonnage for that specific kiln.

(8) Logs of the maintenance procedures used to demonstrate compliance with the maintenance requirements of the periodic kiln work practice standard specified in Table 3 to this subpart.

(9) Records of burner tune-ups used to comply with the dioxin/furan work practice standard for tunnel kilns.

(10) For periods of startup, records of the date, time, and duration of each startup period, logs of the kiln exhaust temperature at the time the first bricks were placed in the kiln, and if applicable, logs of the temperature when the kiln exhaust stopped bypassing the control device. For periods of shutdown, records of the date, time, and duration of each shutdown period, logs of the kiln exhaust temperature at the time the last bricks were placed in the kiln, and if applicable, logs of the temperature when the kiln exhaust began bypassing the control device.

(11) For each malfunction, records of the following information:

(i) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(ii) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.8420(b), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

§ 63.8495 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8505 What parts of the General Provisions apply to me?

Table 8 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.8510 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.8385 and 63.8390, the compliance date requirements in § 63.8395, and the non-opacity emission limitations in § 63.8405.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

§ 63.8515 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Brick and structural clay products (BSCP) manufacturing facility means a plant site that manufactures brick (including, but not limited to, face brick, structural brick, and brick pavers); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products. Brick and structural clay products manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit.

Dry lime injection fabric filter (DIFF) means an APCD that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an APCD that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems typically include recirculation of some of the sorbent.

Dry limestone adsorber (DLA) means an APCD that includes a limestone storage bin, a reaction chamber that is essentially a packed tower filled with limestone, and may or may not include a peeling drum that mechanically scrapes reacted limestone to regenerate the stone for reuse.

Emission limitation means any emission limit or operating limit.

Fabric filter means an APCD used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

Initial startup means:

(1) For a new or reconstructed tunnel kiln controlled with a DLA, the time at which the temperature in the kiln first reaches 260 °C (500 °F) and the kiln contains product; or

(2) for a new or reconstructed tunnel kiln controlled with a DIFF, DLS/FF, or wet scrubber (WS), the time at which the kiln first reaches a level of production that is equal to 75 percent of the kiln design capacity or 12 months after the affected source begins firing BSCP, whichever is earlier.

Kiln exhaust process stream means the portion of the exhaust from a tunnel kiln that exhausts directly to the atmosphere (or to an APCD), rather than to a sawdust dryer.

Large tunnel kiln means a tunnel kiln (existing, new, or reconstructed) with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Method 5 (40 CFR part 60, appendix A–3) or Method 29 (40 CFR part 60, appendix A–8), and as a surrogate for metal HAP contained in the particulates including, but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Periodic kiln means a batch firing kiln.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Responsible official means responsible official as defined in 40 CFR 70.2.

Small tunnel kiln means a tunnel kiln (existing, new, or reconstructed) with a design capacity less than 9.07 Mg/hr (10 tph) of fired product.

Startup means the setting in operation of an affected source and starting the production process.

Tunnel kiln means any continuous kiln that is used to fire BSCP. Some tunnel kilns have two process streams, including a process stream that exhausts directly to the atmosphere or to an APCD, and a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere.

Tunnel kiln design capacity means the maximum amount of brick, in Mg (tons), that a kiln is designed to produce in one year divided by the number of hours in a year (8,760 hours). If a kiln is modified to increase the capacity, the design capacity is considered to be the capacity following modifications.

Wet scrubber (WS) means an APCD that uses water, which may include caustic additives or other chemicals, as the sorbent. Wet scrubbers may use any of various design mechanisms to increase the contact between exhaust gases and the sorbent.

Work practice standard means any design, equipment, work practice, operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart JJJJJ of Part 63

As stated in § 63.8405, you must meet each emission limit in the following table that applies to you.

TABLE 1 TO SUBPART JJJJJ OF PART 63—EMISSION LIMITS

For each . . .	You must meet the following emission limits . . .	Or you must comply with the following . . .
1. Collection of all tunnel kilns at facility, including all process streams.	HF, HCl, and Cl_2 emissions must not exceed 26 kg/hr (57 lb/hr) HCl equivalent, under the health-based standard, as determined using Equations 2 and 3 of § 63.8445..	Not applicable.
2. Existing tunnel kiln, including all process streams.	a. PM emissions must not exceed 0.082 kg/Mg (0.16 lb/ton) of fired product.	i. PM emissions must not exceed 92 mg/dscm (0.040 gr/dscf) at 7% O_2; or ii. Non-Hg HAP metals emissions must not exceed 0.0011 kg/hr (0.023 lb/hr) of fired product.
3. Existing large tunnel kiln (design capacity ≥10 tph of fired product), including all process streams.	a. Hg emissions must not exceed 1.1 E–05 kilogram per megagram (kg/Mg) (2.2 E–05 pound per ton (lb/ton)) of fired product.	i. Hg emissions must not exceed 29 micrograms per dry standard cubic meter (µg/dscm) at 7% O_2; or ii. Hg emissions must not exceed 1.2 E–04 kg/hr (2.7 E–04 lb/hr).
4. Existing small tunnel kiln (design capacity <10 tph of fired product), including all process streams.	a. Hg emissions must not exceed 9.9 E–05 kg/Mg (2.0 E–04 lb/ton) of fired product.	i. Hg emissions must not exceed 70 µg/dscm at 7% O_2; or ii. Hg emissions must not exceed 5.0 E–04 kg/hr (0.0011 lb/hr).
5. New or reconstructed tunnel kiln, including all process streams.	a. PM emissions must not exceed 0.011 kg/Mg (0.022 lb/ton) of fired product.	i. PM emissions must not exceed 15 mg/dscm (0.0066 gr/dscf) at 7% O_2; or ii. Non-Hg HAP metals emissions must not exceed 0.0014 kg/hr (0.0032 lb/hr) of fired product.
6. New or reconstructed large tunnel kiln, including all process streams.	a. Hg emissions must not exceed 1.0 E–05 kg/Mg (2.0 E–05 lb/ton) of fired product.	i. Hg emissions must not exceed 13 µg/dscm at 7% O_2. ii. Hg emissions must not exceed 1.1 E–04 kg/hr (2.4 E–04 lb/hr).
7. New or reconstructed small tunnel kiln, including all process streams.	a. Hg emissions must not exceed 9.9 E–05 kg/Mg (2.0 E–04 lb/ton) of fired product.	i. Hg emissions must not exceed 70 µg/dscm at 7% O_2. ii. Hg emissions must not exceed 5.0 E–04 kg/hr (0.0011 lb/hr).

As stated in § 63.8405, you must meet each operating limit in the following table that applies to you.

TABLE 2 TO SUBPART JJJJJ OF PART 63—OPERATING LIMITS

For each . . .	You must . . .
1. Tunnel kiln equipped with a DLA	a. Maintain the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the HF/HCl/Cl_2 performance test; or, if you are monitoring the bypass stack damper position, initiate corrective action within 1 hour after the bypass damper is opened allowing the kiln exhaust gas to bypass the DLA and complete corrective action in accordance with your OM&M plan; and b. Maintain an adequate amount of limestone in the limestone hopper, storage bin (located at the top of the DLA), and DLA at all times; maintain the limestone feeder setting (on a per ton of fired product basis) at or above the level established during the HF/HCl/Cl_2 performance test; and c. Use the same grade of limestone from the same source as was used during the HF/HCl/Cl_2 performance test; maintain records of the source and grade of limestone; and d. Maintain no VE from the DLA stack.
2. Tunnel kiln equipped with a DIFF or DLS/FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; or maintain no VE from the DIFF or DLS/FF stack; and

TABLE 2 TO SUBPART JJJJJ OF PART 63—OPERATING LIMITS—Continued

For each . . .	You must . . .
3. Tunnel kiln equipped with a WS	b. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting (on a per ton of fired product basis) at or above the level established during the HF/HCl/Cl_2 performance test for continuous injection systems. a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM/non-Hg HAP metals performance test; and b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl/Cl_2 performance test; and c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl/Cl_2 and PM/non-Hg HAP metals performance tests; and d. If chemicals are added to the scrubber water, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the HF/HCl/Cl_2 performance test.
4. Tunnel kiln equipped with an ACI system.	Maintain the average carbon flow rate for each 3-hour block period at or above the average carbon flow rate established during the Hg performance test.
5. Tunnel kiln with no add-on control	a. Maintain no VE from the stack. b. Maintain the kiln process rate at or below the kiln process rate determined according to § 63.8445(g)(1).

As stated in § 63.8405, you must meet each work practice standard in the following table that applies to you.

TABLE 3 TO SUBPART JJJJJ OF PART 63—WORK PRACTICE STANDARDS

For each . . .	You must . . .	According to the following requirements . . .
1. Existing, new or reconstructed periodic kiln.	a. Minimize HAP emissions	i. Develop and use a designed firing time and temperature cycle for each product produced in the periodic kiln. You must either program the time and temperature cycle into your kiln or track each step on a log sheet; and ii. Label each periodic kiln with the maximum load (in tons) of product that can be fired in the kiln during a single firing cycle; and iii. For each firing load, document the total tonnage of product placed in the kiln to ensure that it is not greater than the maximum load identified in item 1b; and iv. Develop and follow maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles; and v. Develop and maintain records for each periodic kiln, as specified in § 63.8490.
2. Existing, new or reconstructed tunnel kiln.	a. Minimize dioxin/furan emissions	i. Maintain and inspect the burners and associated combustion controls (as applicable); and ii. Tune the specific burner type to optimize combustion.
3. Existing, new or reconstructed tunnel kiln during periods of start-up.	a. Minimize HAP emissions	i. Do not put any bricks into the kiln until the kiln exhaust temperature reaches 204 °C (400 °F); and ii. If your kiln has an APCD, begin venting the exhaust from the kiln through the APCD by the time the kiln exhaust temperature reaches 204 °C (400 °F).
4. Existing, new or reconstructed tunnel kiln during periods of shut-down.	a. Minimize HAP emissions	i. Do not put any bricks into the kiln once the kiln exhaust temperature falls to 149 °C (300 °F); and ii. If your kiln has an APCD, continue to vent the exhaust from the kiln through the APCD until the kiln exhaust temperature falls to 149 °C (300 °F).

As stated in § 63.8445, you must conduct each performance test in the following table that applies to you.

TABLE 4 TO SUBPART JJJJJ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Tunnel kiln	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.

TABLE 4 TO SUBPART JJJJJ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 [Part 10] (incorporated by reference, see §63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	
	e. Measure HF, HCl and Cl_2 emissions.	Method 26A of 40 CFR part 60, appendix A–8; or	You may use Method 26 of 40 CFR part 60, appendix A–8, as an alternative to using Method 26A of 40 CFR part 60, appendix A–8, when no acid PM (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a WS) is present. ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see §63.14) may be used as an alternative to Methods 26 and 26A.
		Method 320 of appendix A of this part.	When using Method 320 of appendix A of this part, you must follow the analyte spiking procedures of section 13 of Method 320 of appendix A of this part, unless you can demonstrate that the complete spiking procedure has been conducted at a similar source. ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see §63.14) may be used as an alternative to Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte.
	f. Measure PM emissions or non-Hg HAP metals.	i. For PM only: Method 5 of 40 CFR part 60, appendix A–3; or	
		ii. For PM or non-Hg HAP metals: Method 29 of 40 CFR part 60, appendix A–8.	To determine PM, weigh the filter and report the results as PM filterable.
	g. Measure Hg emissions	Method 29 of 40 CFR part 60, appendix A–8.	ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14) may be used as an alternative to Method 29 (portion for Hg only).
2. Tunnel kiln with no add-on control.	Establish the operating limit(s) for kiln process rate if the total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart.	HCl-equivalent limit in Table 1 to this subpart and emissions and production data from the HF/HCl/Cl_2 performance test.	Using the procedures in §63.8445(g)(1), you must determine the maximum process rate(s) for your kiln(s) that would ensure total facility maximum potential HCl-equivalent emissions remain at or below the HCl-equivalent limit in Table 1 to this subpart. The maximum process rate(s) would become your site-specific process rate operating limit(s).
3. Tunnel kiln that is complying with PM and/or Hg production-based emission limits.	Determine the production rate during each PM/Hg test run in order to determine compliance with PM and/or Hg production-based emission limits.	Production data collected during the PM/Hg performance tests (*e.g.,* no. of pushes per hour, no. of bricks per kiln car, weight of a typical fired brick).	You must measure and record the production rate, on a fired-product basis, of the affected source for each of the three test runs.
4. Tunnel kiln equipped with a DLA.	a. Establish the operating limit for the average pressure drop across the DLA.	Data from the pressure drop measurement device during the HF/HCl/Cl_2 performance test.	You must continuously measure the pressure drop across the DLA, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. The average of the three test runs establishes your minimum site-specific pressure drop operating limit.

TABLE 4 TO SUBPART JJJJJ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Establish the operating limit for the limestone feeder setting.	Data from the limestone feeder during the HF/HCl/Cl_2 performance test.	You must ensure that you maintain an adequate amount of limestone in the limestone hopper, storage bin (located at the top of the DLA), and DLA at all times during the performance test. You must establish your limestone feeder setting, on a per ton of fired product basis, one week prior to the performance test and maintain the feeder setting for the one-week period that precedes the performance test and during the performance test.
	c. Document the source and grade of limestone used.	Records of limestone purchase.	
5. Tunnel kiln equipped with a DIFF or DLS/FF.	Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the HF/HCl/Cl_2 performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting, on a per ton of fired product basis, for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs. The average of the three test runs establishes your minimum site-specific feed rate operating limit.
6. Tunnel kiln equipped with a WS.	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the PM/non-Hg HAP metals performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. The average of the three test runs establishes your minimum site-specific pressure drop operating limit.
	b. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the performance HF/HCl/Cl_2 performance test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid pH operating limit.
	c. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the HF/HCl/Cl_2 and PM/non-Hg HAP metals performance tests.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating level. If different average wet scrubber liquid flow rate values are measured during the HF/HCl/Cl_2 and PM/non-Hg HAP metals tests, the highest of the average values become your site-specific operating limit.
7. Tunnel kiln equipped with a WS that includes chemical addition to the water.	Establish the operating limit for the average scrubber chemical feed rate.	Data from the chemical feed rate measurement device during the HF/HCl/Cl_2 performance test.	You must continuously measure the scrubber chemical feed rate, determine and record the block average chemical feed rate values for the three test runs, and determine and record the 3-hour block average of the recorded chemical feed rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific chemical addition rate operating limit.
8. Tunnel kiln equipped with an ACI system.	Establish the operating limit for the average carbon flow rate.	Data from the carbon flow rate measurement conducted during the Hg performance test.	You must measure the carbon flow rate during each test run, determine and record the block average carbon flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded carbon flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific activated carbon flow rate operating limit.

As stated in § 63.8455, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table.

TABLE 5 TO SUBPART JJJJJ OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
1. Collection of all tunnel kilns at the facility, including all process streams	a. HF, HCl, and Cl_2 emissions must not exceed 26 kg/hr (57 lb/hr) HCl equivalent.	i. You measure HF, HCl, and Cl_2 emissions for each kiln using Method 26 or 26A of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see §63.14); or Method 320 of appendix A of this part or its alternative, ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see §63.14); and ii. You calculate the HCl-equivalent emissions for each kiln using Equation 2 to §63.8445; and iii. You sum the HCl-equivalent values for all kilns at the facility using Equation 3 of §63.8445; and iv. The facility total HCl-equivalent does not exceed 26 kg/hr (57 lb/hr).
2. Existing tunnel kiln, including all process streams.	a. PM emissions must not exceed 0.082 kg/Mg (0.16 lb/ton) of fired product or 92 mg/dscm (0.040 gr/dscf) at 7% O_2; or	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in §63.8445(f)(1), do not exceed 0.082 kg/Mg (0.16 lb/ton) of fired product or 92 mg/dscm (0.040 gr/dscf) at 7% O_2; and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.088 kg/Mg (0.18 lb/ton) of fired product or 97 mg/dscm (0.043 gr/dscf) at 7% O_2.
	b. Non-Hg HAP metals emissions must not exceed 0.011 kg/hr (0.023 lb/hr).	i. The non-Hg HAP metals emissions measured using Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, do not exceed 0.011 kg/hr (0.023 lb/hr); and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which non-Hg HAP metals emissions did not exceed 0.0114 kg/hr (0.023 lb/hr).
3. Existing large tunnel kiln (design capacity ≥10 tph of fired product), including all process streams.	a. Hg emissions must not exceed 1.1 E–05 kg/Mg (2.2 E–05 lb/ton) of fired product or 29 μg/dscm at 7% O_2 or 1.2 E–04 kg/hr (2.7 E–04 lb/hr).	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 1.1 E–05 kg/Mg (2.2 E–05 lb/ton) of fired product or 29 μg/dscm at 7% O_2 or 1.2 E–04 kg/hr (2.7 E–04 lb/hr); and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 1.1 E–05 kg/Mg (2.2 E–05 lb/ton) of fired product or 29 μg/dscm at 7% O_2 or 1.2 E–04 kg/hr (2.7 E–04 lb/hr).
4. Existing small tunnel kiln (design capacity <10 tph of fired product), including all process streams.	a. Hg emissions must not exceed 9.9 E–05 kg/Mg (2.0 E–04 lb/ton) of fired product or 70 μg/dscm at 7% O_2 or 5.0 E–04 kg/hr (0.0011 lb/hr).	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 9.9 E–05 kg/Mg (2.0 E–04 lb/ton) of fired product or 70 μg/dscm at 7% O_2 or 5.0 E–04 kg/hr (0.0011 lb/hr); and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 9.9 E–05 kg/Mg (2.0 E–04 lb/ton) of fired product or 70 μg/dscm at 7% O_2 or 5.0 E–04 kg/hr (0.0011 lb/hr).
5. New or reconstructed tunnel kiln, including all process streams	a. PM emissions must not exceed 0.011 kg/Mg (0.022 lb/ton) of fired product or 15 mg/dscm at 7% O_2; or	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8445(f)(1), do not exceed 0.011 kg/Mg (0.022 lb/ton) of fired product or 15 mg/dscm at 7% O_2; and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.011 kg/Mg (0.022 lb/ton) of fired product or 15 mg/dscm at 7% O_2.
	b. Non-Hg HAP metals emissions must not exceed 0.0014 kg/hr (0.0032 lb/hr).	i. The non-Hg HAP metals emissions measured using Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, do not exceed 0.0014 kg/hr (0.0032 lb/hr); and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which non-Hg HAP metals emissions did not exceed 0.0014 kg/hr (0.0032 lb/hr).
6. New or reconstructed large tunnel kiln, including all process streams.	a. Hg emissions must not exceed 1.0 E–05 kg/Mg (2.0 E–05 lb/ton) of fired product or 13 μg/dscm at 7% O_2 or 1.1 E–04 kg/hr (2.4 E–04 lb/hr).	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 1.0 E–05 kg/Mg (2.0 E–05 lb/ton) of fired product or 13 μg/dscm at 7% O_2; and

TABLE 5 TO SUBPART JJJJJ OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
		ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 1.0 E–05 kg/Mg (2.0 E–05 lb/ton) of fired product or 13 μg/dscm at 7% O_2 or 1.1 E–04 kg/hr (2.4 E–04 lb/hr).
7. New or reconstructed small tunnel kiln, including all process streams.	a. Hg emissions must not exceed 9.9 E–05 kg/Mg (2.0 E–04 lb/ton) of fired product or 70 μg/dscm at 7% O_2 or 5.0 E–04 kg/hr (0.0011 lb/hr).	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14), over the period of the initial performance test, do not exceed 9.9 E–05 kg/Mg (2.0 E–04 lb/ton) of fired product or 70 μg/dscm at 7% O_2 or 5.0 E–04 kg/hr (0.0011 lb/hr); and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 9.9 E–05 kg/Mg (2.0 E–04 lb/ton) of fired product or 70 μg/dscm at 7% O_2.
	a. Minimize HAP emissions	i. Develop a designed firing time and temperature cycle for each product produced in the periodic kiln. You must either program the time and temperature cycle into your kiln or track each step on a log sheet; and ii. Label each periodic kiln with the maximum load (in tons) of product that can be fired in the kiln during a single firing cycle; and iii. Develop maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles.
9. Existing, new or reconstructed tunnel kiln.	a. Minimize dioxin/furan emissions.	i. Conduct initial inspection of the burners and associated combustion controls (as applicable); and ii. Tune the specific burner type to optimize combustion.

As stated in § 63.8470, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table.

TABLE 6 TO SUBPART JJJJJ OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .
1. Tunnel kiln equipped with a DLA	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for tunnel kilns equipped with a DLA.	i. Collecting the DLA pressure drop data according to § 63.8450(a); reducing the DLA pressure drop data to 3-hour block averages according to § 63.8450(a); maintaining the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the HF/HCl/Cl_2 performance test; or continuously monitoring the bypass stack damper position at least once every 15 minutes during normal kiln operation, and initiating corrective action within 1 hour after the bypass damper is opened allowing the kiln exhaust gas to bypass the DLA and completing corrective action in accordance with your OM&M plan; and ii. Verifying that the limestone hopper and storage bin (located at the top of the DLA) contain adequate limestone by performing a daily visual check, which could include one of the following: (1) conducting a physical check of the hopper; (2) creating a visual access point, such as a window, on the side of the hopper; (3) installing a camera in the hopper that provides continuous feed to a video monitor in the control room; or (4) confirming that load level indicators in the hopper are not indicating the need for additional limestone; and iii. Recording the limestone feeder setting daily (on a per ton of fired product basis) to verify that the feeder setting is being maintained at or above the level established during the HF/HCl/Cl_2 performance test; and iv. Using the same grade of limestone from the same source as was used during the HF/HCl/Cl_2 performance test; maintaining records of the source and type of limestone; and v. Performing VE observations of the DLA stack at the frequency specified in § 63.8470(e) using Method 22 of 40 CFR part 60, appendix A–7; maintaining no VE from the DLA stack.

TABLE 6 TO SUBPART JJJJJ OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .
2. Tunnel kiln equipped with a DIFF or DLS/FF.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for tunnel kilns equipped with DIFF or DLS/FF.	i. If you use a bag leak detection system, initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; or performing VE observations of the DIFF or DLS/FF stack at the frequency specified in §63.8470(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the DIFF or DLS/FF stack; and ii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once during each shift of operation to verify that the feeder setting is being maintained at or above the level established during the HF/HCl/Cl_2 performance test.
3. Tunnel kiln equipped with a WS ..	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for tunnel kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to §63.8450(a); reducing the scrubber pressure drop data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM/non-Hg HAP metals performance test; and ii. Collecting the scrubber liquid pH data according to §63.8450(a); reducing the scrubber liquid pH data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl/Cl_2 performance test; and iii. Collecting the scrubber liquid flow rate data according to §63.8450(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl/Cl_2 and PM/non-Hg HAP metals performance tests; and iv. If chemicals are added to the scrubber water, collecting the scrubber chemical feed rate data according to §63.8450(a); reducing the scrubber chemical feed rate data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the HF/HCl/Cl_2 performance test.
4. Tunnel kiln equipped with an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 4 of Table 2 to this subpart for tunnel kilns equipped with ACI system.	Collecting the carbon flow rate data according to §63.8450(a); reducing the carbon flow rate data to 3-hour block averages according to §63.8450(a); maintaining the average carbon flow rate for each 3-hour block period at or above the average carbon flow rate established during the Hg performance test.
5. Tunnel kiln with no add-on contro	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 5 of Table 2 to this subpart for tunnel kilns with no add-on control.	i. Performing VE observations of the stack at the frequency specified in §63.8470(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the stack. ii. If your last calculated total facility maximum potential HCl-equivalent was not at or below the health-based standard in Table 1 to this subpart, collecting the kiln process rate data according to §63.8450(a); reducing the kiln process rate data to 3-hour block averages according to §63.8450(a); maintaining the average kiln process rate for each 3-hour block period at or below the kiln process rate determined according to §63.8445(g)(1).
6. Periodic kil	a. Minimize HAP emissions	i. Using a designed firing time and temperature cycle for each product produced in the periodic kiln; and ii. For each firing load, documenting the total tonnage of product placed in the kiln to ensure that it is not greater than the maximum load identified in Item 1.a.ii of Table 3 to this subpart; and

TABLE 6 TO SUBPART JJJJJ OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .
7. Tunnel kil	a. Minimize dioxin/furan emission	iii. Following maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles; and iv. Developing and maintaining records for each periodic kiln, as specified in § 63.8490. i. Maintaining and inspecting the burners and associated combustion controls (as applicable) and tuning the specific burner type to optimize combustion no later than 36 calendar months after the previous tune-up; and ii. Maintaining records of burner tune-ups used to demonstrate compliance with the dioxin/furan work practice standard; and iii. Submitting a report of most recent tune-up conducted with compliance report.

TABLE 7 TO SUBPART JJJJJ OF PART 63—REQUIREMENTS FOR REPORTS

You must submit . . .	The report must contain . . .	You must submit the report . . .
1. A compliance report	a. If there are no deviations from any emission limitations (emission limits, operating limits) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period.	Semiannually according to the requirements in § 63.8485(b).
	b. If you have a deviation from any emission limitation (emission limit, operating limit) during the reporting period, the report must contain the information in § 63.8485(d) or (e). If there were periods during which the CMS was out-of-control, as specified in your OM&M plan, the report must contain the information in § 63.8485(e).	Semiannually according to the requirements in § 63.8485(b).

As stated in § 63.8505, you must comply with the General Provisions in §§ 63.1 through 63.16 that apply to you according to the following table.

TABLE 8 TO SUBPART JJJJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ

Citation	Subject	Brief description	Applies to subpart JJJJJ?
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Compliance date; circumvention; severability	Yes.
§ 63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1) through (4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		No.
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§ 63.6(c)(1) and (2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3) and (4)	[Reserved]		No.

TABLE 8 TO SUBPART JJJJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

Citation	Subject	Brief description	Applies to subpart JJJJJ?
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved]		No.
§ 63.6(e)(1)(i)	Operation & Maintenance	General Duty to minimize emissions	No. See § 63.8420(b) for general duty requirement.
§ 63.6(e)(1)(ii)	Operation & Maintenance	Requirement to correct malfunctions ASAP	No.
§ 63.6(e)(1)(iii)	Operation & Maintenance	Operation and maintenance requirements enforceable independent of emissions limitations.	Yes.
§ 63.6(e)(2)	[Reserved]		No.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for startup, shutdown, and malfunction (SSM) and SSMP; content of SSMP.	No.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	No.
§ 63.6(f)(2) and (3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)	Opacity/VE Standards	Requirements for opacity and VE standards	No, not applicable.
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category	Yes.
§ 63.7(a)(1) and (2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations for emission limits and work practice standards; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(a)(4)	Notification of Delay in Performance Testing Due To Force Majeure.	Must notify Administrator of delay in performance testing due to force majeure.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling.	Must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance(QA)/ Test Plan.	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	No, § 63.8445 specifies requirements.
§ 63.7(e)(2) and (3)	Conditions for Conducting Performance Tests.	Must conduct according to subpart and EPA test methods unless Administrator approves alternative; must have at least three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§ 63.7(e)(4)	Testing under Section 114	Administrator's authority to require testing under section 114 of the Act.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in subpart	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved]		No.
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	No, not applicable.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2) and (3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintenance consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM.	Reporting requirements for SSM when action is described in SSMP.	No.

TABLE 8 TO SUBPART JJJJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

Citation	Subject	Brief description	Applies to subpart JJJJJ?
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements.	No.
§ 63.8(c)(2) and (3)	Monitoring System Installation.	Must install to get representative emission and parameter measurements.	Yes.
§ 63.8(c)(4)	CMS Requirements	Requirements for CMS	No, § 63.8450 specifies requirements.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	COMS minimum procedures	No, not applicable.
§ 63.8(c)(6)	CMS Requirements	Zero and high level calibration check requirements	Yes.
§ 63.8(c)(7) and (8)	CMS Requirements	Out-of-control periods	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control	Yes.
§ 63.8(e)	CMS Performance Evaluation.	Requirements for CMS performance evaluation	Yes.
§ 63.8(f)(1) through (5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy test for continuous emissions monitoring systems (CEMS).	No, not applicable.
§ 63.8(g)	Data Reduction	COMS and CEMS data reduction requirements	No, not applicable.
§ 63.9(a)	Notification Requirements	Applicability; State delegation	Yes.
§ 63.9(b)	Initial Notifications	Requirements for initial notifications	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	No, not applicable.
§ 63.9(g)(1)	Additional Notifications When Using CMS.	Notification of performance evaluation	Yes
§ 63.9(g)(2) and (3)	Additional Notifications When Using CMS.	Notification of COMS data use; notification that relative accuracy alternative criterion were exceeded.	No, not applicable.
§ 63.9(h)	Notification of Compliance Status.	Contents; submittal requirements	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/R Reporting	Applicability; general information	Yes.
§ 63.10(b)(1)	General Recordkeeping Requirements.	General requirements	Yes.
§ 63.10(b)(2)(i)	Records Related to SSM	Recordkeeping of occurrence and duration of startups and shutdowns.	No.
§ 63.10(b)(2)(ii)	Records Related to SSM	Recordkeeping of failures to meet a standard	No. See § 63.8490(c)(2) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the volume of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(b)(2)(iii)	Records Related to SSM	Maintenance records	Yes.
§ 63.10(b)(2)(iv) and (v)	Records Related to SSM	Actions taken to minimize emissions during SSM	No.
§ 63.10(b)(2)(vi) through (xii) and (xiv).	CMS Records	Records when CMS is malfunctioning, inoperative or out-of-control.	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	No, not applicable.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1) through (15)	Records	Additional records for CMS	No, §§ 63.8425 and 63.8490 specify requirements.

TABLE 8 TO SUBPART JJJJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

Citation	Subject	Brief description	Applies to subpart JJJJJ?
§ 63.10(d)(1) and (2)	General Reporting Requirements.	Requirements for reporting; performance test results reporting.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	Requirements for reporting opacity and VE	No, not applicable.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	No. See § 63.8485(f) for malfunction reporting requirements.
§ 63.10(e)(1) through (3)	Additional CMS Reports	Requirements for CMS reporting	No, §§ 63.8425 and 63.8485 specify requirements.
§ 63.10(e)(4)	Reporting COMS data	Requirements for reporting COMS data with performance test data.	No, not applicable.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirement for flares	No, not applicable.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses for reports, notifications, requests	Yes.
§ 63.14	Incorporation by Reference	Materials incorporated by reference	Yes.
§ 63.15	Availability of Information	Information availability; confidential information	Yes.
§ 63.16	Performance Track Provisions.	Requirements for Performance Track member facilities	Yes.

■ 4. Subchapter C is amended by revising subpart KKKKK to read as follows:

Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

What This Subpart Covers

Sec.
63.8530 What is the purpose of this subpart?
63.8535 Am I subject to this subpart?
63.8540 What parts of my plant does this subpart cover?
63.8545 When do I have to comply with this subpart?

Emission Limitations and Work Practice Standards

63.8555 What emission limitations and work practice standards must I meet?
63.8560 What are my options for meeting the emission limitations and work practice standards?

General Compliance Requirements

63.8570 What are my general requirements for complying with this subpart?
63.8575 What do I need to know about operation, maintenance, and monitoring plans?

Testing and Initial Compliance Requirements

63.8585 By what date must I conduct performance tests?
63.8590 When must I conduct subsequent performance tests?
63.8595 How do I conduct performance tests and establish operating limits?
63.8600 What are my monitoring installation, operation, and maintenance requirements?
63.8605 How do I demonstrate initial compliance with the emission limitations and work practice standards?

Continuous Compliance Requirements

63.8615 How do I monitor and collect data to demonstrate continuous compliance?
63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

Notifications, Reports, and Records

63.8630 What notifications must I submit and when?
63.8635 What reports must I submit and when?
63.8640 What records must I keep?
63.8645 In what form and for how long must I keep my records?

Other Requirements and Information

63.8655 What parts of the General Provisions apply to me?
63.8660 Who implements and enforces this subpart?
63.8665 What definitions apply to this subpart?

Tables to Subpart KKKKK of Part 63

Table 1 to Subpart KKKKK of Part 63—Emission Limits
Table 2 to Subpart KKKKK of Part 63—Operating Limits
Table 3 to Subpart KKKKK of Part 63—Work Practice Standards
Table 4 to Subpart KKKKK of Part 63—Requirements for Performance Tests
Table 5 to Subpart KKKKK of Part 63—Toxic Equivalency Factors
Table 6 to Subpart KKKKK of Part 63—Initial Compliance with Emission Limitations and Work Practice Standards
Table 7 to Subpart KKKKK of Part 63—Continuous Compliance with Emission Limitations and Work Practice Standards
Table 8 to Subpart KKKKK of Part 63—Requirements for Reports
Table 9 to Subpart KKKKK of Part 63—Applicability of General Provisions to Subpart KKKKK

What This Subpart Covers

§ 63.8530 What is the purpose of this subpart?

This subpart establishes national emission limitations and work practice standards for hazardous air pollutants (HAP) emitted from clay ceramics manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.8535 Am I subject to this subpart?

You are subject to this subpart if you own or operate a clay ceramics manufacturing facility that is, is located at, or is part of a major source of HAP emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A clay ceramics manufacturing facility is a plant site that manufactures pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware (*e.g.,* sinks and toilets). Clay ceramics manufacturing facilities typically process clay, shale, and various additives; form the processed materials into tile or sanitaryware shapes; and dry and fire the ceramic products. Glazes are applied to many tile and sanitaryware products.

(b) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10

tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.8540 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at a clay ceramics manufacturing facility.

(b) Each existing, new, or reconstructed ceramic tile roller kiln, sanitaryware tunnel kiln, sanitaryware shuttle kiln, ceramic tile glaze line using glaze spraying, sanitaryware glaze spray booth, ceramic tile spray dryer, and floor tile press dryer is an affected source.

(c) Process units not subject to the requirements of this subpart are listed in paragraphs (c)(1) through (6) of this section.

(1) Kilns that are used exclusively for refiring.

(2) Kilns that are used exclusively for setting glazes on previously fired products.

(3) Glaze spray operations that use wet glazes containing less than 0.1 (weight) percent metal HAP (dry basis).

(4) Raw material processing and handling.

(5) Wall tile press dryers.

(6) Sanitaryware ware dryers.

(d) A source is a new affected source if construction of the affected source began after December 18, 2014, and you met the applicability criteria at the time you began construction.

(e) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.8545 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is after December 18, 2014 but before [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the applicable emission limitations and work practice standards in Tables 1, 2, and 3 to this subpart no later than [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your affected source is after [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the applicable emission limitations and work practice standards in Tables 1, 2, and 3 to this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations and work practice standards for existing sources in Tables 1, 2, and 3 to this subpart no later than [DATE 3 YEARS AND 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP by adding a new affected source or by reconstructing, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(d) If you have a new area source (*i.e.,* an area source for which construction or reconstruction was commenced after December 18, 2014) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(e) You must meet the notification requirements in § 63.8630 according to the schedule in § 63.8630 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations and Work Practice Standards

§ 63.8555 What emission limitations and work practice standards must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

(c) You must meet each work practice standard in Table 3 to this subpart that applies to you.

§ 63.8560 What are my options for meeting the emission limitations and work practice standards?

(a) To meet the emission limitations in Tables 1 and 2 to this subpart, you must use one or more of the options listed in paragraphs (a)(1) and (2) of this section.

(1) *Emissions control system.* Use an emissions capture and collection system and an air pollution control device (APCD) and demonstrate that the resulting emissions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(2) *Process changes.* Use low-HAP raw materials or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart.

(b) To meet the work practice standards for affected sanitaryware shuttle kilns, you must comply with the requirements listed in Table 3 to this subpart.

(c) To meet the work practice standards for affected sources during periods of startup and shutdown, you must comply with the requirements listed in Table 3 to this subpart.

General Compliance Requirements

§ 63.8570 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of routine control device maintenance as specified in paragraph (d) of this section.

(b) Except as specified in paragraph (d) of this section, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source. During the period between the compliance date specified for your affected source in § 63.8545 and the date upon which continuous monitoring systems (CMS) (*e.g.,* continuous parameter monitoring systems) have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) For each affected source that is subject to the emission limits specified in Table 1 to this subpart, you must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.8575.

(d) If you own or operate an affected source that is subject to the emission

limits specified in Table 1 to this subpart and must perform routine maintenance on the control device for that affected source, you may bypass the source control device and continue operating the affected source upon approval by the Administrator provided you satisfy the conditions listed in paragraphs (d)(1) through (5) of this section.

(1) You must request a routine control device maintenance exemption from the Administrator. Your request must justify the need for the routine maintenance on the control device and the time required to accomplish the maintenance activities, describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during source shutdowns, describe how you plan to minimize emissions to the greatest extent possible during the maintenance, and provide any other documentation required by the Administrator.

(2) The routine control device maintenance exemption must not exceed 4 percent of the annual operating uptime for each affected source.

(3) The request for the routine control device maintenance exemption, if approved by the Administrator, must be incorporated by reference in and attached to the affected source's title V permit.

(4) You must minimize HAP emissions during the period when the affected source is operating and the control device is offline.

(5) You must minimize the time period during which the affected source is operating and the control device is offline.

(e) If you own or operate an affected kiln that is subject to the work practice standard specified in Table 3 to this subpart, you must be in compliance with that work practice standard at all times, except during periods of natural gas curtailment or other periods when natural gas is not available.

(f) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 9 to this subpart.

§ 63.8575 What do I need to know about operation, maintenance, and monitoring plans?

(a) For each affected source that is subject to the emission limits specified in Table 1 to this subpart, you must prepare, implement, and revise as necessary an OM&M plan that includes the information in paragraph (b) of this section. Your OM&M plan must be available for inspection by the permitting authority upon request.

(b) Your OM&M plan must include, as a minimum, the information in paragraphs (b)(1) through (13) of this section.

(1) Each process and APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits for each parameter that represent continuous compliance with the emission limitations in § 63.8555. The limits must be based on values of the monitored parameters recorded during performance tests.

(4) Procedures for the proper operation and routine and long-term maintenance of each APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(5) Procedures for installing the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last APCD).

(6) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(7) Continuous monitoring system performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(8) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8600 and 63.8(c)(1), (3), (7), and (8).

(9) Continuous monitoring system data quality assurance procedures consistent with the requirements in § 63.8(d).

(10) Continuous monitoring system recordkeeping and reporting procedures consistent with the requirements in §§ 63.8635 and 63.8640.

(11) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (b)(11)(i) through (iii) of this section.

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions necessary for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and corrective actions were initiated and completed.

(12) Procedures for keeping records to document compliance.

(13) If you operate an affected source and you plan to take the source control device out of service for routine maintenance, as specified in § 63.8570(d), the procedures specified in paragraphs (b)(13)(i) and (ii) of this section.

(i) Procedures for minimizing HAP emissions from the affected source during periods of routine maintenance of the source control device when the affected source is operating and the control device is offline.

(ii) Procedures for minimizing the duration of any period of routine maintenance on the source control device when the affected source is operating and the control device is offline.

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance test to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.8585 By what date must I conduct performance tests?

For each affected source that is subject to the emission limits specified in Table 1 to this subpart, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8545 and according to the provisions in § 63.7(a)(2).

§ 63.8590 When must I conduct subsequent performance tests?

(a) For each affected source that is subject to the emission limits specified in Table 1 to this subpart, you must conduct a performance test before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test.

(b) You must conduct a performance test when you want to change the

parameter value for any operating limit specified in your OM&M plan.

§ 63.8595 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 4 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and calibrate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart.

(d) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(e) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(f) You must use the data gathered during the performance test and the equations in paragraphs (f)(1) through (4) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the production-based particulate matter (PM) and mercury (Hg) emission limits for ceramic tile roller kilns and sanitaryware tunnel kilns in Table 1 to this subpart, you must calculate your mass emissions per unit of production for each test run using Equation 1 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 1)}$$

Where:

MP = mass per unit of production, kilograms (pounds) of pollutant per megagram (ton) of fired product

ER = mass emission rate of pollutant (PM or Hg) during each performance test run, kilograms (pounds) per hour

P = production rate during each performance test run, megagrams (tons) of fired product per hour.

(2) To determine compliance with the PM emission limits for ceramic tile glaze lines with glaze spraying and sanitaryware glaze spray booths in Table 1 to this subpart, you must calculate your mass emissions per unit of glaze sprayed for each test run using Equation 2 of this section:

$$MG = \frac{ER}{G} \qquad \text{(Eq. 2)}$$

Where:

MG = mass per unit of glaze application, kilograms (pounds) of PM per megagram (ton) of glaze sprayed

ER = mass emission rate of PM during each performance test run, kilograms (pounds) per hour

G = glaze application rate during each performance test run, megagrams (tons) of glaze sprayed per hour

(3) To determine compliance with the dioxin/furan emission limits for tunnel and roller kilns, ceramic tile spray dryers, and floor tile press dryers in Table 1 to this subpart, you must calculate the sum of the 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) toxic equivalents (TEQs) for each test run using Equation 3 of this section:

$$TEQ = \sum_{i=1}^{n} \left(C_i \times TEF_i \right) \qquad \text{(Eq. 3)}$$

Where:

TEQ = sum of the 2,3,7,8-TCDD TEQs, nanograms per dry standard cubic meter

C_i = concentration of dioxin or furan congener i, nanograms per dry standard cubic meter

TEF_i = 2,3,7,8-TCDD toxic equivalency factor (TEF) for congener i, as provided in Table 5 to this subpart.

n = number of congeners included in TEQ

(4) To determine compliance with the health-based standard for acid gas HAP for clay ceramics manufacturing facilities in Table 1 to this subpart, you must:

(i) Calculate the HCl-equivalent emissions for HF and HCl for each tunnel or roller kiln at your facility using Equation 4 of this section:

$$E_i = E_{HCl} + \left[E_{HF} \left(\frac{RfC_{HCl}}{RfC_{HF}} \right) \right] \qquad \text{(Eq. 4)}$$

Where:

E_i = HCl-equivalent emissions for kiln i, kilograms (pounds) per hour

E_{HCl} = emissions of HCl, kilograms (pounds) per hour

E_{HF} = emissions of HF, kilograms (pounds) per hour

RfC_{HCl} = reference concentration for HCl, 20 micrograms per cubic meter
RfC_{HF} = reference concentration for HF, 14 micrograms per cubic meter

(ii) If you have multiple tunnel or roller kilns at your facility, sum the HCl-equivalent values for all tunnel or roller kilns at the facility using Equation 5 of this section:

$$E_{total} = \sum_{i=1}^{n} E_i \quad \text{(Eq. 5)}$$

Where:

E_{total} = HCl-equivalent emissions for total of all kilns at facility, kilograms (pounds) per hour
E_i = HCl-equivalent emissions for kiln i, kilograms (pounds) per hour
n = number of tunnel kilns at facility

(iii) Compare this value to the health-based standard in Table 1 to this subpart.

(g) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you as specified in paragraph (g)(1) of this section and in Table 4 to this subpart.

(1)(i) If you do not have an APCD installed on your tunnel or roller kiln, you must calculate the maximum potential HCl-equivalent emissions for HF and HCl for each tunnel or roller kiln at your facility using Equation 6 of this section:

$$E_{maxi} = (Cap_i)\left[(MP_{iHCl}) + (MP_{iHF})\left(\frac{RfC_{HCl}}{RfC_{HF}}\right)\right] \quad \text{(Eq. 6)}$$

Where:

$E_{max\ i}$ = maximum potential HCl-equivalent emissions for kiln i, kilograms (pounds) per hour
Cap_i = design capacity for kiln i, megagrams (tons) of fired product per hour
MP_{iHCl} = mass of HCl per unit of production for kiln i, kilograms (pounds) of HCl per megagram (ton) of fired product
MP_{iHF} = mass of HF per unit of production for kiln i, kilograms (pounds) of HF per megagram (ton) of fired product
RfC_{HCl} = reference concentration for HCl, 20 micrograms per cubic meter
RfC_{HF} = reference concentration for HF, 14 micrograms per cubic meter

(ii) If you have multiple tunnel or roller kilns at your facility, sum the maximum potential HCl-equivalent values for all tunnel or roller kilns at the facility using Equation 7 of this section:

$$E_{maxtotal} = \sum_{i=1}^{n} E_{maxi} \quad \text{(Eq. 7)}$$

Where:

$E_{max\ total}$ = maximum potential HCl-equivalent emissions for total of all kilns at facility, kilograms (pounds) per hour
$E_{max\ i}$ = maximum potential HCl-equivalent emissions for kiln i, kilograms (pounds) per hour
n = number of kilns at facility

(iii) If you have a single tunnel or roller kiln at your facility and the total facility maximum potential HCl-equivalent emissions ($E_{max\ total}$) are greater than the HCl-equivalent limit in Table 1 to this subpart, you must determine the maximum process rate for the kiln using Equation 8 that would ensure the total facility maximum potential HCl-equivalent emissions remain at or below the HCl-equivalent limit. The maximum process rate would become your operating limit for process rate and must be included in your OM&M plan.

$$P_{maxi} = \frac{HCl\text{-}eq}{\left[(MP_{iHCl}) + (MP_{iHF})\left(\frac{RfC_{HCl}}{RfC_{HF}}\right)\right]} \quad \text{(Eq. 8)}$$

Where:

$P_{max\ i}$ = maximum process rate for kiln i, megagrams (tons) per hour
HCl-eq = HCl-equivalent limit in Table 1 to this subpart, 62 kilograms (140 pounds) per hour
MP_{iHCl} = mass of HCl per unit of production for kiln i, kilograms (pounds) of HCl per megagram (ton) of fired product
MP_{iHF} = mass of HF per unit of production for kiln i, kilograms (pounds) of HF per megagram (ton) of fired product
RfC_{HCl} = reference concentration for HCl, 20 micrograms per cubic meter
RfC_{HF} = reference concentration for HF, 14 micrograms per cubic meter

(iv) If you have multiple tunnel or roller kilns at your facility and the total facility maximum potential HCl-equivalent emissions ($E_{max\ total}$) are greater than the HCl-equivalent limit in Table 1 to this subpart, you must determine the combination of maximum process rates that would ensure that total facility maximum potential HCl-equivalent remains at or below the HCl-equivalent limit. The maximum process rates would become your operating limits for process rate and must be included in your OM&M plan.

(h) For each affected source that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means

of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (h)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (h)(1)(i) through (iv) of this section.

(i) A description of the alternative APCD or process changes.

(ii) The type of monitoring device or procedure that will be used.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(2) Establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring procedures request and, as applicable, as specified in Table 4 to this subpart.

§ 63.8600 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (5) of this section.

(1) Conduct a performance evaluation of each CMS according to your OM&M plan.

(2) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption as specified in § 63.8570(d)).

(3) Determine and record the 3-hour block averages of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours. To calculate the average for each 3-hour average period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption as specified in § 63.8570(d)).

(4) Record the results of each inspection, calibration, and validation check.

(5) At all times, maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(b) For each liquid flow measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (b)(1) through (3) of this section.

(1) Locate the flow sensor in a position that provides a representative flowrate.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the liquid flowrate.

(3) At least semiannually, conduct a flow sensor calibration check.

(c) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (c)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check the pressure tap daily to ensure that it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating pressure range, conduct calibration checks or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each pH measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (d)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(e) For each bag leak detection system, you must meet the requirements in paragraphs (e)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997) (incorporated by reference, see § 63.14). Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997) (incorporated by reference, see § 63.14).

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in your OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition, as defined in section 5.2 of the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997) (incorporated by

reference, see § 63.14). Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(f) For each lime, chemical, or carbon feed rate measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (f)(1) and (2) of this section.

(1) Locate the measurement device in a position that provides a representative feed rate measurement.

(2) At least semiannually, conduct a calibration check.

(g) For each temperature measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and (g)(1) through (3) of this section.

(1) Locate the measurement device in a position that provides a representative temperature.

(2) Use a measurement device with a minimum sensitivity of 1 percent of the temperature being measured.

(3) At least semiannually, conduct a calibration check.

(h) Requests for approval of alternate monitoring procedures must meet the requirements in §§ 63.8595(h) and 63.8(f).

§ 63.8605 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to Table 6 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8595 and Table 4 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8630(e).

Continuous Compliance Requirements

§ 63.8615 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, malfunction, and routine control device maintenance as specified in § 63.8570(d) when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities for purposes of calculating data averages. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the valid data collected during all other periods in assessing compliance. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation from the monitoring requirements.

§ 63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit, operating limit, and work practice standard in Tables 1, 2, and 3 to this subpart that applies to you according to the methods specified in Table 7 to this subpart.

(b) For each affected source that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart, or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart, and each operating limit established as required in § 63.8595(h)(2) according to the methods specified in your approved alternative monitoring procedures request, as described in §§ 63.8595(h)(1) and 63.8(f).

(c) You must report each instance in which you did not meet each emission limit and operating limit in this subpart that applies to you. This includes periods of startup, shutdown, malfunction, and routine control device maintenance. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8635.

(d) Deviations that occur during periods of control device maintenance covered by an approved routine control device maintenance exemption according to § 63.8570(d) are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the approved routine control device maintenance exemption.

(e) You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for visible emissions (VE) from tunnel or roller kilns that are uncontrolled or equipped with DIFF, DLS/FF, or other dry control device by monitoring VE at each kiln stack according to the requirements in paragraphs (e)(1) through (3) of this section.

(1) Perform daily VE observations of each kiln stack according to the procedures of Method 22 of 40 CFR part 60, appendix A–7. You must conduct the Method 22 test while the affected source is operating under normal conditions. The duration of each Method 22 test must be at least 15 minutes.

(2) If VE are observed during any daily test conducted using Method 22 of 40 CFR part 60, appendix A–7, you must promptly initiate and complete corrective actions according to your OM&M plan. If no VE are observed in 30 consecutive daily Method 22 tests for any kiln stack, you may decrease the frequency of Method 22 testing from daily to weekly for that kiln stack. If VE are observed during any weekly test, you must promptly initiate and complete corrective actions according to your OM&M plan, resume Method 22 testing of that kiln stack on a daily basis, and maintain that schedule until no VE are observed in 30 consecutive daily tests, at which time you may again decrease the frequency of Method 22 testing to a weekly basis.

(3) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A–7, you must report these deviations by following the requirements in § 63.8635.

Notifications, Reports, and Records

§ 63.8630 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9 (b) through (e), (g)(1), and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(2), if you start up your new or reconstructed affected source or affected source described in § 63.8540(d) or § 63.8540(e) on or after [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**],

you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a written notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 6 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) through (3) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) and (ii) of this section in your Notification of Compliance Status:

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) For each APCD that includes a fabric filter, if a bag leak detection system is used, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.8600(e).

(3) For each compliance demonstration required in Table 6 to this subpart that does not include a performance test (*i.e.,* compliance demonstration for the work practice standard), you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the compliance demonstration.

(f) If you request a routine control device maintenance exemption according to § 63.8570(d), you must submit your request for the exemption no later than 30 days before the compliance date.

(g) If you own or operate an affected kiln that is subject to the work practice standard specified in Item 1 of Table 3 to this subpart, and you intend to use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.8665. The notification must include the information specified in paragraphs (g)(1) through (5) of this section.

(1) Company name and address.

(2) Identification of the affected kiln.

(3) Reason you are unable to use natural gas or equivalent fuel, including the date when the natural gas curtailment was declared or the natural gas supply interruption began.

(4) Type of alternative fuel that you intend to use.

(5) Dates when the alternative fuel use is expected to begin and end.

§ 63.8635 What reports must I submit and when?

(a) You must submit each report in Table 8 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 8 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8545 and ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) A description of control device maintenance performed while the control device was offline and the affected source controlled by the control device was operating, including the information specified in paragraphs (c)(4)(i) through (iii) of this section.

(i) The date and time when the control device was shut down and restarted.

(ii) Identification of the affected source that was operating and the number of hours that the affected source operated while the control device was offline.

(iii) A statement of whether or not the control device maintenance was included in your approved routine control device maintenance exemption developed as specified in § 63.8570(d). If the control device maintenance was included in your approved routine control device maintenance exemption, then you must report the information in paragraphs (c)(4)(iii)(A) through (C) of this section.

(A) The total amount of time that the affected source controlled by the control device operated during the current semiannual compliance period and during the previous semiannual compliance period.

(B) The amount of time that each affected source controlled by the control device operated while the control device was offline for maintenance covered under the routine control device maintenance exemption during the current semiannual compliance period and during the previous semiannual compliance period.

(C) Based on the information recorded under paragraphs (c)(4)(iii)(A) and (B) of this section, compute the annual percent of affected source operating uptime during which the control device was offline for routine maintenance using Equation 1 of this section.

$$RM = \frac{DT_p + DT_c}{SU_p + SU_c}(100) \qquad \text{(Eq. 1)}$$

Where:

RM = Annual percentage of affected source uptime during which control device was offline for routine control device maintenance

DT_p = Control device downtime claimed under the routine control device maintenance exemption for the previous semiannual compliance period

DT_c = Control device downtime claimed under the routine control device maintenance exemption for the current semiannual compliance period

SU_p = Affected source uptime for the previous semiannual compliance period

SU_c = Affected source uptime for the current semiannual compliance period

(5) If there are no deviations from any emission limitations (emission limits or operating limits) or work practice standards that apply to you, the compliance report must contain a statement that there were no deviations from the emission limitations or work practice standards during the reporting period.

(6) If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and (d)(1) through (3) of this section. This includes periods of startup, shutdown, and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period and identification of the sources for which there was a deviation.

(2) Information on the number, date, time, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(3) The applicable operating limit or work practice standard from which you deviated and either the parameter monitor reading during the deviation or a description of how you deviated from the work practice standard.

(e) For each deviation from an emission limitation (emission limit or operating limit) occurring at an affected source where you are using a CMS to comply with the emission limitations in this subpart, you must include the information in paragraphs (c)(1) through (4) and (e)(1) through (13) of this section. This includes periods of startup, shutdown, and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period and identification of the sources for which there was a deviation.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the pertinent information in your OM&M plan.

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during routine control device maintenance covered in your approved routine control device maintenance exemption or during another period, and the cause of each deviation (including unknown cause, if applicable).

(5) An estimate of the quantity of each regulated pollutant emitted over the emission limit during the deviation, and a description of the method used to estimate the emissions.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CMS.

(12) The date of the latest CMS certification or audit.

(13) A description of any changes in CMS, processes, or control equipment since the last reporting period.

(f) If a malfunction occurred during the reporting period, the compliance report must contain the information in paragraphs (c)(1) through (4) and (f)(1) and (2) of this section.

(1) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded.

(2) A description of actions taken by an owner or operator during a malfunction of an affected facility to minimize emissions in accordance with § 63.8570(b), including actions taken to correct a malfunction.

(g) If you have obtained a title V operating permit according to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 8 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permitting authority.

(h) If you own or operate an affected kiln that is subject to the work practice standard specified in Item 1 of Table 3 to this subpart, and you use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel. The report must include the information in paragraphs (h)(1) through (6) of this section.

(1) Company name and address.

(2) Identification of the affected kiln.

(3) Reason for using the alternative fuel.

(4) Type of alternative fuel used to fire the affected kiln.

(5) Dates that the use of the alternative fuel started and ended.

(6) Amount of alternative fuel used.

(i) Within 60 days after the date of completing each performance test (as defined in § 63.2) as required by this subpart, you must submit the results of the performance test following the procedures specified in either paragraph (i)(1) or (i)(2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*http://www.epa.gov/ttn/chief/ert/index.html*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*http://cdx.epa.gov/epa_home.asp*).) Performance test data must be submitted in a file format generated through the use of the EPA's ERT. Instead of submitting performance test data in a file format generated through the use of the EPA's ERT, you may submit an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT (or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site once the XML schema is available), including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file (or alternate file) with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

§ 63.8640 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests as required in § 63.10(b)(2)(viii).

(3) Records relating to control device maintenance and documentation of your approved routine control device maintenance exemption, if you request such an exemption under § 63.8570(d).

(b) You must keep the records required in Table 7 to this subpart to show continuous compliance with each emission limitation and work practice standard that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (10) of this section.

(1) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(2) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation, actions taken to minimize emissions in accordance with § 63.8570(b) and the corrective action taken to return the affected unit to its normal or usual manner of operation, and whether the deviation occurred during a period of startup, shutdown, or malfunction. Record and retain a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) For each affected source, records of production rates on a fired-product weight basis.

(4) Records for any approved alternative monitoring or test procedures.

(5) Records of maintenance and inspections performed on the APCD.

(6) Current copies of your OM&M plan, including any revisions, with records documenting conformance.

(7) Logs of the information required in paragraphs (c)(7)(i) through (iii) of this section to document proper operation of your sanitaryware shuttle kiln.

(i) Records of the firing time and temperature cycle for each product produced in each sanitaryware shuttle kiln. If all shuttle kilns use the same time and temperature cycles, one copy may be maintained for each kiln. Reference numbers must be assigned to use in log sheets.

(ii) For each sanitaryware shuttle kiln, a log that details the type of product fired in each batch, the corresponding time and temperature protocol reference number, and an indication of whether the appropriate time and temperature cycle was fired.

(iii) For each sanitaryware shuttle kiln, a log of the actual tonnage of product fired in the shuttle kiln and an indication of whether the tonnage was below the maximum tonnage for that specific kiln.

(8) Logs of the maintenance procedures used to demonstrate compliance with the maintenance requirements of the sanitaryware shuttle kiln work practice standard specified in Table 3 to this subpart.

(9) For periods of startup, records of the date, time, and duration of each startup period, logs of the kiln or dryer exhaust temperature at the time the first ceramics were placed in the kiln or dryer, and if applicable, logs of the temperature when the kiln or dryer exhaust stopped bypassing the control device. For periods of shutdown, records of the date, time, and duration of each shutdown period, logs of the kiln or dryer exhaust temperature at the time the last ceramics were placed in the kiln or dryer, and if applicable, logs of the temperature when the kiln or dryer exhaust began bypassing the control device.

(10) For each malfunction, records of the following information:

(i) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(ii) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.8570(b), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

§ 63.8645 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8655 What parts of the General Provisions apply to me?

Table 9 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.8660 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.8535 and 63.8540, the compliance date requirements in § 63.8545, and the non-opacity emission limitations in § 63.8555.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

§ 63.8665 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Clay ceramics manufacturing facility means a plant site that manufactures pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware (*e.g.,* sinks and toilets). Clay ceramics manufacturing facilities typically process clay, shale, and various additives, form the processed materials into tile or sanitaryware shapes, and dry and fire the ceramic products. Glazes are applied to many tile and sanitaryware products.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit.

Dioxin/furan means, for purposes of this subpart, the sum of the 2,3,7,8–TCDD toxic equivalents calculated using Equation 3 of § 63.8595

Dry lime injection fabric filter (DIFF) means an APCD that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an APCD that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems typically include recirculation of some of the sorbent.

Emission limitation means any emission limit or operating limit.

Fabric filter means an APCD used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

Glaze means a coating of colored, opaque, or transparent material applied to ceramic products before firing.

Glaze line means a production line for glazing ceramic products, which includes glaze spraying (typically comprised of one or more glaze spray booths) and other types of glazing operations (*e.g.,* dipping, flooding, centrifugal disc glazing, curtain coating).

Glaze spray booth means a type of equipment used for spraying glaze on ceramic products.

Initial startup means the time at which the kiln first reaches a level of production that is equal to 75 percent of the kiln design capacity or 12 months after the affected source begins firing clay ceramics, whichever is earlier.

Kiln design capacity means the maximum amount of clay ceramics, in Mg (tons), that a kiln is designed to produce in one year divided by the number of hours in a year (8,760 hours). If a kiln is modified to increase the capacity, the design capacity is considered to be the capacity following modifications.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Method 5 (40 CFR part 60, appendix A–3) or Method 29 (40 CFR part 60, appendix A–8), and as a surrogate for metal HAP contained in the particulates including, but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Period of natural gas curtailment or supply interruption means a period of time during which the supply of natural gas to an affected facility is halted for reasons beyond the control of the facility. An increase in the cost or unit price of natural gas does not constitute a period of natural gas curtailment or supply interruption.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Responsible official means responsible official as defined in 40 CFR 70.2.

Roller kiln means a continuous kiln similar to a tunnel kiln except that the unfired ceramic product travels through the kiln in a single layer on rollers. In the clay ceramics source category, roller kilns are used at ceramic tile manufacturing plants.

Shuttle kiln means a batch firing kiln that is designed with a removable superstructure that is tilted or raised using hydraulic struts to allow entrance and egress. In the clay ceramics source category, shuttle kilns are used at sanitaryware manufacturing plants.

Spray dryer means a drying chamber used to form a free-flowing powder from a slurry of ceramic mix and water, to improve handling and compaction. In the clay ceramics source category, spray dryers are used at ceramic tile manufacturing plants.

Startup means the setting in operation of an affected source and starting the production process.

Tunnel kiln means any continuous kiln that is not a roller kiln that is used to fire clay ceramics. In the clay ceramics source category, tunnel kilns are used at sanitaryware manufacturing plants.

Wet scrubber (WS) means an APCD that uses water, which may include caustic additives or other chemicals, as the sorbent. Wet scrubbers may use any of various design mechanisms to increase the contact between exhaust gases and the sorbent.

Work practice standard means any design, equipment, work practice, operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart KKKKK of Part 63

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you.

TABLE 1 TO SUBPART KKKKK OF PART 63—EMISSION LIMITS

For each . . .	You must meet the following emission limits . . .
1. Collection of all tunnel or roller kilns at facility	HF and HCl emissions must not exceed 62 kilograms per hour (kg/hr) (140 pounds per hour (lb/hr)) HCl equivalent, under the health-based standard, as determined using Equations 4 and 5 of § 63.8595.
2. Existing floor tile roller kiln	a. PM emissions must not exceed 0.090 kilogram per megagram (kg/Mg) (0.18 pound per ton (lb/ton)) of fired product. b. Hg emissions must not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 4.6 nanograms per dry standard cubic meter (ng/dscm) at 7% O_2.
3. Existing wall tile roller kiln	a. PM emissions must not exceed 0.099 kg/Mg (0.20 lb/ton) of fired product. b. Hg emissions must not exceed 6.7 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 0.16 ng/dscm at 7% O_2.
4. Existing first-fire sanitaryware tunnel kiln	a. PM emissions must not exceed 0.17 kg/Mg (0.33 lb/ton) of fired product. b. Hg emissions must not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 1.5 ng/dscm at 7% O_2.
5. Existing tile glaze line with glaze spraying	a. PM emissions must not exceed 0.93 kg/Mg (1.9 lb/ton) of glaze sprayed. b. Hg emissions must not exceed 7.9 E–05 kg/Mg (1.6 E–04 lb/ton) of glaze sprayed.
6. Existing sanitaryware manual glaze application.	PM emissions must not exceed 16 kg/Mg (33 lb/ton) of glaze sprayed.
7. Existing sanitaryware spray machine glaze application.	PM emissions must not exceed 6.2 kg/Mg (12 lb/ton) of glaze sprayed.
8. Existing sanitaryware robot glaze application	PM emissions must not exceed 4.4 kg/Mg (8.8 lb/ton) of glaze sprayed.
9. Existing floor tile spray dryer	Dioxin/furan emissions must not exceed 44 ng/dscm at 7% O_2.
10. Existing wall tile spray dryer	Dioxin/furan emissions must not exceed 0.12 ng/dscm at 7% O_2.
11. Existing floor tile press dryer	Dioxin/furan emissions must not exceed 0.19 ng/dscm at 7% O_2.
12. New or reconstructed floor tile roller kiln	a. PM emissions must not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product. b. Hg emissions must not exceed 1.9 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 1.5 ng/dscm at 7% O_2.
13. New or reconstructed wall tile roller kiln	a. PM emissions must not exceed 0.15 kg/Mg (0.27 lb/ton) of fired product. b. Hg emissions must not exceed 1.5 E–06 kg/Mg (3.1 E–06 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 0.160.23 ng/dscm at 7% O_2.
14. New or reconstructed first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.047 kg/Mg (0.095 lb/ton) of fired product. b. Hg emissions must not exceed 6.0 E–05 kg/Mg (1.2 E–04 lb/ton) of fired product. c. Dioxin/furan emissions must not exceed 0.37 ng/dscm at 7% O_2.
15. New or reconstructed tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.30 kg/Mg (0.61 lb/ton) of glaze sprayed. b. Hg emissions must not exceed 7.9 E–05 kg/Mg (1.6 E–04 lb/ton) of glaze sprayed.
16. New or reconstructed sanitaryware manual glaze application.	PM emissions must not exceed 1.9 kg/Mg (3.8 lb/ton) of glaze sprayed.
17. New or reconstructed sanitaryware spray machine glaze application.	PM emissions must not exceed 1.6 kg/Mg (3.2 lb/ton) of glaze sprayed.
18. New or reconstructed sanitaryware robot glaze application.	PM emissions must not exceed 1.1 kg/Mg (2.2 lb/ton) of glaze sprayed.
19. New or reconstructed floor tile spray dryer	Dioxin/furan emissions must not exceed 0.17 ng/dscm at 7% O_2.
20. New or reconstructed wall tile spray dryer	Dioxin/furan emissions must not exceed 0.12 ng/dscm at 7% O_2.
21. New or reconstructed floor tile press dryer	Dioxin/furan emissions must not exceed 0.19 ng/dscm at 7% O_2.

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you.

TABLE 2 TO SUBPART KKKKK OF PART 63—OPERATING LIMITS

For each . . .	You must . . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; or maintain no VE from the DIFF or DLS/FF stack; and b. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting (on a per ton of fired product basis) at or above the level established during the performance test for continuous injection systems.

TABLE 2 TO SUBPART KKKKK OF PART 63—OPERATING LIMITS—Continued

For each . . .	You must . . .
2. Tunnel or roller kiln equipped with a WS.	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test; and b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test; and c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests; and d. If chemicals are added to the scrubber water, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the HF/HCl performance test.
3. Tunnel or roller kiln equipped with an ACI system.	Maintain the average carbon flow rate for each 3-hour block period at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests.
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	If you intend to comply with the dioxin/furan emission limit without an ACI system, maintain the average kiln operating temperature for each 3-hour block period at or above the average temperature established during the dioxin/furan performance test.
5. Tunnel or roller kiln with no add-on control.	a. Maintain no VE from the stack; and b. Maintain the kiln process rate at or below the kiln process rate determined according to § 63.8595(g)(1); and c. Maintain the average kiln operating temperature for each 3-hour block period at or below the average temperature established during the dioxin/furan performance test.
6. Glaze spray operation equipped with a FF.	If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; or maintain no VE from the FF stack; and
7. Glaze spray operation equipped with a WS.	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test; and b. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test.
8. Glaze spray operation equipped with a water curtain.	Conduct daily inspections to verify the presence of water flow to the wet control system; and Conduct weekly visual inspections of the system ductwork and control equipment for leaks; and Conduct annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment.
9. Glaze spray operation equipped with baffles.	Conduct an annual visual inspection of the baffles to confirm the baffles are in place.
10. Spray dryer	Maintain the average operating temperature for each 3-hour block period at or above the average temperature established during the dioxin/furan performance test.
11. Floor tile press dryer	Maintain the average operating temperature for each 3-hour block period at or below the average temperature established during the dioxin/furan performance test.

As stated in § 63.8555, you must comply with each work practice standard in the following table that applies to you.

TABLE 3 TO SUBPART KKKKK OF PART 63—WORK PRACTICE STANDARDS

For each . . .	You must . . .	According to one of the following requirements . . .
1. Existing, new, or reconstructed sanitaryware shuttle kiln.	a. Minimize HAP emissions	i. Use natural gas, or equivalent, as the kiln fuel, except during periods of natural gas curtailment or supply interruption, as defined in § 63.8665; and ii. Develop and use a designed firing time and temperature cycle for each product produced in the sanitaryware shuttle kiln. You must either program the time and temperature cycle into your kiln or track each step on a log sheet; and iii. Label each sanitaryware shuttle kiln with the maximum load (in tons) of product that can be fired in the kiln during a single firing cycle; and iv. For each firing load, document the total tonnage of product placed in the kiln to ensure that it is not greater than the maximum load identified in item 1.a.iii; and v. Develop and follow maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles; and vi. Develop and maintain records for each sanitaryware shuttle kiln, as specified in § 63.8640.
2. Existing, new or reconstructed kiln or dryer during periods of startup.	a. Minimize HAP emissions	i. Do not put any ceramics into the kiln or dryer until the kiln or dryer exhaust temperature reaches 204 °C (400 °F); and ii. If your kiln or dryer has an APCD, begin venting the exhaust from the kiln or dryer through the APCD by the time the kiln or dryer exhaust temperature reaches 204 °C (400 °F).

TABLE 3 TO SUBPART KKKKK OF PART 63—WORK PRACTICE STANDARDS—Continued

For each . . .	You must . . .	According to one of the following requirements . . .
3. Existing, new or reconstructed kiln or dryer during periods of shutdown.	a. Minimize HAP emissions	i. Do not put any ceramics into the kiln or dryer once the kiln or dryer exhaust temperature falls to 149 °C (300 °F); and ii. If your kiln or dryer has an APCD, continue to vent the exhaust from the kiln or dryer through the APCD until the kiln or dryer exhaust temperature falls to 149 °C (300 °F).

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Tunnel or roller kiln	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 [Part 10] (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	
	e. Measure HF and HCl emissions.	i. Method 26A of 40 CFR part 60, appendix A–8; or.	You may use Method 26 of 40 CFR part 60, appendix A–8, as an alternative to using Method 26A of 40 CFR part 60, appendix A–8, when no acid PM (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a WS) is present. ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see § 63.14) may be used as an alternative to Methods 26 and 26A.
		ii. Method 320 of appendix A of this part.	When using Method 320 of appendix A of this part, you must follow the analyte spiking procedures of section 13 of Method 320 of appendix A of this part, unless you can demonstrate that the complete spiking procedure has been conducted at a similar source. ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see § 63.14) may be used as an alternative to Method 320 if the test plan preparation and implementation in Annexes A1–A8 are mandatory and the %R in Annex A5 is determined for each target analyte.
	f. Measure PM emissions ..	i. Method 5 of 40 CFR part 60, appendix A–3; or.	
		ii. Method 29 of 40 CFR part 60, appendix A–8.	To determine PM, weigh the filter and report the results as PM filterable
	g. Measure Hg emissions	Method 29 of 40 CFR part 60, appendix A–8.	ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14) may be used as an alternative to Method 29 (portion for Hg only).
	h. Measure dioxin/furan emissions.	Method 23 of 40 CFR part 60, appendix A–7.	
2. Glaze spray operation	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 [Part 10] (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	
	e. Measure PM emissions	Method 5 of 40 CFR part 60, appendix A–3.	
	f. Measure Hg emissions (tile glaze spray operations only).	Method 29 of 40 CFR part 60, appendix A–8.	ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 63.14) may be used as an alternative to Method 29 (portion for Hg only).
3. Spray dryer or floor tile press dryer.	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A–1.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A–1.	You may use Method 2A, 2C, 2D, or 2F of 40 CFR part 60, appendix A–1, or Method 2G of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A–1.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A–2.	You may use Method 3A or 3B of 40 CFR part 60, appendix A–2, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A–2. ANSI/ASME PTC 19.10–1981 [Part 10] (incorporated by reference, see § 63.14) may be used as an alternative to the manual procedures (but not the instrumental procedures) in Methods 3A and 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A–3.	
	e. Measure dioxin/furan emissions.	Method 23 of 40 CFR part 60, appendix A–7.	
4. Tunnel or roller kiln with no add-on control.	a. Establish the operating limit(s) for kiln process rate if the total facility maximum potential HCl-equivalent emissions are greater than the HCl-equivalent limit in Table 1 to this subpart.	HCl-equivalent limit in Table 1 to this subpart and emissions and production data from the HF/HCl/Cl_2 performance test.	Using the procedures in § 63.8595(g)(1), you must determine the maximum process rate(s) for your kiln(s) that would ensure total facility maximum potential HCl-equivalent emissions remain at or below the HCl-equivalent limit in Table 1 to this subpart. The maximum process rate(s) would become your site-specific process rate operating limit(s).
	b. Establish the operating limit for kiln operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the kiln operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 3-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your minimum site-specific operating limit.
5. Tunnel or roller kiln that is complying with PM and/or Hg production-based emission limits.	Determine the production rate during each PM/Hg test run in order to determine compliance with PM and/or Hg production-based emission limits.	Production data collected during the PM/Hg performance tests (*e.g.,* the number of ceramic pieces and weight per piece in the kiln during a test run divided by the amount of time to fire a piece).	You must measure and record the production rate, on a fired-product weight basis, of the affected kiln for each of the three test runs.
6. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the HF/HCl performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting, on a per ton of fired product basis, for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs. The average of the three test runs establishes your minimum site-specific feed rate operating limit.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
7. Tunnel or roller kiln equipped with a WS.	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the PM performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. The average of the three test runs establishes your minimum site-specific pressure drop operating limit.
	b. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the HF/HCl performance test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid pH operating limit.
	c. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the HF/HCl and PM performance tests.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating level. If different average wet scrubber liquid flow rate values are measured during the HF/HCl and PM tests, the highest of the average values become your site-specific operating limit.
8. Tunnel or roller kiln equipped with a WS that includes chemical addition to the water.	Establish the operating limit for the average scrubber chemical feed rate.	Data from the chemical feed rate measurement device during the HF/HCl performance test.	You must continuously measure the scrubber chemical feed rate, determine and record the block average chemical feed rate values for the three test runs, and determine and record the 3-hour block average of the recorded chemical feed rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific chemical addition rate operating limit.
9. Tunnel or roller kiln equipped with an ACI system.	Establish the operating limit for the average carbon flow rate.	Data from the carbon flow rate measurement conducted during the Hg performance test.	You must measure the carbon flow rate during each test run, determine and record the block average carbon flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded carbon flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific activated carbon flow rate operating limit.
10. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Establish the operating limit for kiln operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the kiln operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 3-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your minimum site-specific operating limit.
11. Glaze spray operation equipped with a WS.	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the PM performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. The average of the three test runs establishes your minimum site-specific pressure drop operating limit.
	b. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the PM performance test.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. The average of the three test runs establishes your minimum site-specific liquid flow rate operating limit.

TABLE 4 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
12. Spray dryer	Establish the operating limit for operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 3-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your minimum site-specific operating limit.
13. Floor tile press dryer	Establish the operating limit for operating temperature.	Data from the temperature measurement device during the dioxin/furan performance test.	You must continuously measure the operating temperature, determine and record the block average temperature values for the three test runs, and determine and record the 3-hour block average of the recorded temperature measurements for the three test runs. The average of the three test runs establishes your maximum site-specific operating limit.

As stated in § 63.8595(f)(3), you must demonstrate initial compliance with each dioxin/furan emission limit that applies to you by calculating the sum of the 2,3,7,8-TCDD TEQs using the TEFs in the following table.

TABLE 5 TO SUBPART KKKKK OF PART 63—TOXIC EQUIVALENCY FACTORS

For each dioxin/furan congener . . .	You must calculate its 2,3,7,8-TCDD TEQ using the following TEF . . .
2,3,7,8-tetrachlorodibenzo-p-dioxin	1
1,2,3,7,8-pentachlorodibenzo-p-dioxin	1
1,2,3,4,7,8-hexachlorodibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorodibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorodibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin	0.01
Octachlorodibenzo-p-dioxin	0.0003
2,3,7,8-tetrachlorodibenzofuran	0.1
2,3,4,7,8-pentachlorodibenzofuran	0.3
1,2,3,7,8-pentachlorodibenzofuran	0.03
1,2,3,4,7,8-hexachlorodibenzofuran	0.1
1,2,3,6,7,8-hexachlorodibenzofuran	0.1
1,2,3,7,8,9-hexachlorodibenzofuran	0.1
2,3,4,6,7,8-hexachlorodibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorodibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorodibenzofuran	0.01
Octachlorodibenzofuran	0.0003

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to the following table.

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
1. Collection of all tunnel or roller kilns at the facility.	a. HF, HCl, and Cl_2 emissions must not exceed 62 kg/hr (140 lb/hr) HCl equivalent.	i. You measure HF and HCl emissions for each kiln using Method 26 or 26A of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6735–01 (Reapproved 2009) (incorporated by reference, see § 63.14); or Method 320 of appendix A of this part or its alternative, ASTM D6348–03 (Reapproved 2010) (incorporated by reference, see § 63.14); and ii. You calculate the HCl-equivalent emissions for HF for each kiln using Equation 4 of § 63.8595; and iii. You sum the HCl-equivalent values for all kilns at the facility using Equation 5 of § 63.8595; and iv. The facility total HCl-equivalent does not exceed 62 kg/hr (140 lb/hr).
2. Existing floor tile roller kiln	a. PM emissions must not exceed 0.090 kg/Mg (0.18 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in § 63.8595(f)(1), do not exceed 0.090 kg/Mg (0.18 lb/ton) of fired product; and ii. You establish and have a record of the applicable operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.090 kg/Mg (0.18 lb/ton) of fired product.

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
	b. Hg emissions must not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 6.3 E–05 kg/Mg (1.3 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 4.6 ng/dscm at 7% O_2..	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 4.6 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 4.6 ng/dscm at 7% O_2.
3. Existing wall tile roller kiln	a. PM emissions must not exceed 0.10 kg/Mg (0.20 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in §63.8595(f)(1), do not exceed 0.10 kg/Mg (0.20 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.10 kg/Mg (0.20 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.0 E–04 kg/Mg (2.0 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 1.0 E–04 kg/Mg (2.0 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 1.0 E–04 kg/Mg (2.0 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 0.17 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.17 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 0.17 ng/dscm at 7% O_2.
4. Existing first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.17 kg/Mg (0.33 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in §63.8595(f)(1), do not exceed 0.17 kg/Mg (0.33 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.17 kg/Mg (0.33 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 1.3 E–04 kg/Mg (2.6 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 1.5 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 1.5 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 1.5 ng/dscm at 7% O_2.
5. Existing tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.93 kg/Mg (1.9 lb/ton) of glaze sprayed.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8595(f)(2), do not exceed 0.93 kg/Mg (1.9 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.93 kg/Mg (1.9 lb/ton) of glaze sprayed.
	b. Hg emissions must not exceed 7.9 E–05 kg/Mg (1.6 E–04 lb/ton) of glaze sprayed.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 7.9 E–05 kg/Mg (1.6 E–04 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 7.9 E–05 kg/Mg (1.6 E–04 lb/ton) of glaze sprayed.

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
6. Existing sanitaryware manual glaze application.	a. PM emissions must not exceed 16 kg/Mg (33 lb/ton) of glaze sprayed.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8595(f)(2), do not exceed 16 kg/Mg (33 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 16 kg/Mg (33 lb/ton) of glaze sprayed.
7. Existing sanitaryware spray machine glaze application.	a. PM emissions must not exceed 6.2 kg/Mg (12 lb/ton) of glaze sprayed.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8595(f)(2), do not exceed 6.2 kg/Mg (12 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 6.2 kg/Mg (12 lb/ton) of glaze sprayed.
8. Existing sanitaryware robot glaze application.	a. PM emissions must not exceed 4.4 kg/Mg (8.8 lb/ton) of glaze sprayed.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8595(f)(2), do not exceed 4.4 kg/Mg (8.8 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 4.4 kg/Mg (8.8 lb/ton) of glaze sprayed.
9. Existing floor tile spray dryer.	a. Dioxin/furan emissions must not exceed 44 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 44 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 44 ng/dscm at 7% O_2.
10. Existing wall tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.12 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.12 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 0.12 ng/dscm at 7% O_2.
11. Existing floor tile press dryer.	a. Dioxin/furan emissions must not exceed 0.19 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.19 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 0.19 ng/dscm at 7% O_2.
12. New or reconstructed floor tile roller kiln..	a. PM emissions must not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in §63.8595(f)(1), do not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.9 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 1.9 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 1.9 E–05 kg/Mg (3.9 E–05 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 1.5 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 1.5 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 1.5 ng/dscm at 7% O_2.
13. New or reconstructed wall tile roller kiln.	a. PM emissions must not exceed 0.10 kg/Mg (0.20 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in §63.8595(f)(1), do not exceed 0.10 kg/Mg (0.20 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.10 kg/Mg (0.20 lb/ton) of fired product.
	b. Hg emissions must not exceed 1.0 E–04 kg/Mg (2.0 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 1.0 E–04 kg/Mg (2.0 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 1.0 E–04 kg/Mg (2.0 E–04 lb/ton) of fired product.

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
	c. Dioxin/furan emissions must not exceed 0.17 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.17 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 0.17 ng/dscm at 7% O_2.
14. New or reconstructed first-fire sanitaryware tunnel kiln.	a. PM emissions must not exceed 0.047 kg/Mg (0.095 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3 or Method 29 of 40 CFR part 60, appendix A–8, over the period of the initial performance test, according to the calculations in §63.8595(f)(1), do not exceed 0.047 kg/Mg (0.095 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.047 kg/Mg (0.095 lb/ton) of fired product.
	b. Hg emissions must not exceed 6.0 E–05 kg/Mg (1.2 E–04 lb/ton) of fired product.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 6.0 E–05 kg/Mg (1.2 E–04 lb/ton) of fired product; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 6.0 E–05 kg/Mg (1.2 E–04 lb/ton) of fired product.
	c. Dioxin/furan emissions must not exceed 0.37 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.37 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 0.37 ng/dscm at 7% O_2.
15. New or reconstructed tile glaze line with glaze spraying.	a. PM emissions must not exceed 0.30 kg/Mg (0.61 lb/ton) of glaze sprayed.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8595(f)(2), do not exceed 0.30 kg/Mg (0.61 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.30 kg/Mg (0.61 lb/ton) of glaze sprayed.
	b. Hg emissions must not exceed 7.9 E–05 kg/Mg (1.6 E–04 lb/ton) of glaze sprayed.	i. The Hg emissions measured using Method 29 of 40 CFR part 60, appendix A–8 or its alternative, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see §63.14), over the period of the initial performance test, do not exceed 7.9 E–05 kg/Mg (1.6 E–04 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which Hg emissions did not exceed 7.9 E–05 kg/Mg (1.6 E–04 lb/ton) of glaze sprayed.
16. New or reconstructed sanitaryware manual glaze application.	a. PM emissions must not exceed 1.9 kg/Mg (3.8 lb/ton) of glaze sprayed.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8595(f)(2), do not exceed 1.9 kg/Mg (3.8 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 1.9 kg/Mg (3.8 lb/ton) of glaze sprayed.
17. New or reconstructed sanitaryware spray machine glaze application.	a. PM emissions must not exceed 1.6 kg/Mg (3.2 lb/ton) of glaze sprayed.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8595(f)(2), do not exceed 1.6 kg/Mg (3.2 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 1.6 kg/Mg (3.2 lb/ton) of glaze sprayed.
18. New or reconstructed sanitaryware robot glaze application.	a. PM emissions must not exceed 1.1 kg/Mg (2.2 lb/ton) of glaze sprayed.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A–3, over the period of the initial performance test, according to the calculations in §63.8595(f)(2), do not exceed 1.1 kg/Mg (2.2 lb/ton) of glaze sprayed; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 1.1 kg/Mg (2.2 lb/ton) of glaze sprayed.
19. New or reconstructed floor tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.17 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.17 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 0.17 ng/dscm at 7% O_2.
20. New or reconstructed wall tile spray dryer.	a. Dioxin/furan emissions must not exceed 0.12 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.12 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 0.12 ng/dscm at 7% O_2.

TABLE 6 TO SUBPART KKKKK OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
21. New or reconstructed floor tile press dryer.	a. Dioxin/furan emissions must not exceed 0.19 ng/dscm at 7% O_2.	i. The dioxin/furan emissions measured using Method 23 of 40 CFR part 60, appendix A–7, over the period of the initial performance test, do not exceed 0.19 ng/dscm at 7% O_2; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which dioxin/furan emissions did not exceed 0.19 ng/dscm at 7% O_2.
22. Existing, new, or reconstructed sanitaryware shuttle kiln..	a. Minimize HAP emissions	i. Use natural gas, or equivalent, as the kiln fuel; and ii. Develop a designed firing time and temperature cycle for each product produced in the sanitaryware shuttle kiln. You must either program the time and temperature cycle into your kiln or track each step on a log sheet; and iii. Label each sanitaryware shuttle kiln with the maximum load (in tons) of product that can be fired in the kiln during a single firing cycle; and iv. Develop maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles.

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you according to the following table.

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .
1. Tunnel or roller kiln equipped with a DIFF or DLS/FF.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF.	i. If you use a bag leak detection system, initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; or performing VE observations of the DIFF or DLS/FF stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the DIFF or DLS/FF stack; and ii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the HF/HCl performance test.

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .
2. Tunnel or roller kiln equipped with a WS.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to § 63.8600(a); reducing the scrubber pressure drop data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test; and ii. Collecting the scrubber liquid pH data according to § 63.8600(a); reducing the scrubber liquid pH data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the HF/HCl performance test; and iii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the highest average scrubber liquid flow rate established during the HF/HCl and PM performance tests; and iv. If chemicals are added to the scrubber water, collecting the scrubber chemical feed rate data according to § 63.8600(a); reducing the scrubber chemical feed rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the HF/HCl performance test.
3. Tunnel or roller kiln equipped with an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with ACI system.	Collecting the carbon flow rate data according to § 63.8600(a); reducing the carbon flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average carbon flow rate for each 3-hour block period at or above the highest average carbon flow rate established during the Hg and dioxin/furan performance tests.
4. Tunnel or roller kiln intending to comply with dioxin/furan emission limit without an ACI system.	Each emission limit in Table 1 to this subpart and each operating limit in Item 4 of Table 2 to this subpart for kilns intending to comply with dioxin/furan emission limit without an ACI system.	Collecting the kiln operating temperature data according to § 63.8600(a); reducing the kiln operating temperature data to 3-hour block averages according to § 63.8600(a); maintaining the average kiln operating temperature for each 3-hour block period at or below the average operating temperature established during the dioxin/furan performance test.
5. Tunnel or roller kiln with no add-on control.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 5 of Table 2 to this subpart for tunnel or roller kilns with no add-on control.	i. Performing VE observations of the stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the stack. ii. If your last calculated total facility maximum potential HCl-equivalent was not at or below the health-based standard in Table 1 to this subpart, collecting the kiln process rate data according to § 63.8600(a); reducing the kiln process rate data to 3-hour block averages according to § 63.8600(a); maintaining the average kiln process rate for each 3-hour block period at or below the kiln process rate determined according to § 63.8595(g)(1). iii. Collecting the kiln operating temperature data according to § 63.8600(a); reducing the kiln operating temperature data to 3-hour block averages according to § 63.8600(a); maintaining the average kiln operating temperature for each 3-hour block period at or above the average operating temperature established during the dioxin/furan performance test.
6. Glaze spray operation equipped with a FF.	Each emission limit in Table 1 to this subpart and each operating limit in Item 6 of Table 2 to this subpart for glaze spray operations equipped with a FF.	If you use a bag leak detection system, initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; or performing VE observations of the FF stack at the frequency specified in § 63.8620(e) using Method 22 of 40 CFR part 60, appendix A–7; and maintaining no VE from the FF stack.

TABLE 7 TO SUBPART KKKKK OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .
7. Glaze spray operation equipped with a WS.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 7 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to § 63.8600(a); reducing the scrubber pressure drop data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the PM performance test; and ii. Collecting the scrubber liquid flow rate data according to § 63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to § 63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the PM performance test.
8. Glaze spray operation equipped with a water curtain.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 8 of Table 2 to this subpart for kilns equipped with a water curtain.	Conducting daily inspections to verify the presence of water flow to the wet control system; and Conducting weekly visual inspections of the system ductwork and control equipment for leaks; and Conducting annual inspections of the interior of the control equipment (if applicable) to determine the structural integrity and condition of the control equipment.
9. Glaze spray operation equipped with baffles.	Each emission limit in Table 1 to this subpart and each operating limit in Item 9 of Table 2 to this subpart for kilns equipped with baffles.	Conducting an annual visual inspection of the baffles to confirm the baffles are in place.
10. Spray dryer	Each emission limit in Table 1 to this subpart and each operating limit in Item 10 of Table 2 to this subpart for spray dryers.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to 3-hour block averages according to § 63.8600(a); maintaining the average operating temperature for each 3-hour block period at or above the average operating temperature established during the dioxin/furan performance test.
11. Floor tile press dryer	Each emission limit in Table 1 to this subpart and each operating limit in Item 11 of Table 2 to this subpart for floor tile press dryers.	Collecting the operating temperature data according to § 63.8600(a); reducing the operating temperature data to 3-hour block averages according to § 63.8600(a); maintaining the average operating temperature for each 3-hour block period at or below the average operating temperature established during the dioxin/furan performance test.
12. Sanitaryware shuttle kiln	a. Minimize HAP emissions	i. Maintaining records documenting your use of natural gas, or an equivalent fuel, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.8665; and iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.8635(g); and iv. Using a designed firing time and temperature cycle for each product produced in the shuttle kiln; and v. For each firing load, documenting the total tonnage of product placed in the kiln to ensure that it is not greater than the maximum load identified in Item 1.a.iii of Table 3 to this subpart; and vi. Following maintenance procedures for each kiln that, at a minimum, specify the frequency of inspection and maintenance of temperature monitoring devices, controls that regulate air-to-fuel ratios, and controls that regulate firing cycles; and vii. Developing and maintaining records for each shuttle kiln, as specified in § 63.8640.

As stated in § 63.8635, you must submit each report that applies to you according to the following table.

TABLE 8 TO SUBPART KKKKK OF PART 63—REQUIREMENTS FOR REPORTS

You must submit . . .	The report must contain . . .	You must submit the report . . .
1. A compliance report	a. If there are no deviations from any emission limitations or work practice standards that apply to you, a statement that there were no deviations from the emission limitations or work practice standards during the reporting period. If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period.	Semiannually according to the requirements in § 63.8635(b).
	b. If you have a deviation from any emission limitation (emission limit, operating limit) during the reporting period, the report must contain the information in § 63.8635(d) or (e). If there were periods during which the CMS was out-of-control, as specified in your OM&M plan, the report must contain the information in § 63.8635(e).	Semiannually according to the requirements in § 63.8635(b).
2. A report of alternative fuel use	The information in § 63.8635(g)	If you are subject to the work practice standards specified in Table 3 to this subpart, and you use an alternative fuel to fire an affected kiln, by letter within 10 working days after terminating the use of the alternative fuel.

As stated in § 63.8655, you must comply with the General Provisions in §§ 63.1 through 63.16 that apply to you according to the following table.

TABLE 9 TO SUBPART KKKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK

Citation	Subject	Brief description	Applies to Subpart KKKKK?
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Compliance date; circumvention; severability	Yes.
§ 63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1) through (4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§ 63.6(c)(1) and (2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3) and (4)	[Reserved]		No.
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved]		No.
§ 63.6(e)(1)(i)	Operation & Maintenance	General Duty to minimize emissions	No. See § 63.8570(b) for general duty requirement.
§ 63.6(e)(1)(ii)	Operation & Maintenance	Requirement to correct malfunctions ASAP	No.
§ 63.6(e)(1)(iii)	Operation & Maintenance	Operation and maintenance requirements enforceable independent of emissions limitations.	Yes.
§ 63.6(e)(2)	[Reserved]		No.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for startup, shutdown, and malfunction (SSM) and SSMP; content of SSMP.	No.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	No.

TABLE 9 TO SUBPART KKKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

Citation	Subject	Brief description	Applies to Subpart KKKKK?
§ 63.6(f)(2) and (3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)	Opacity/VE Standards	Requirements for opacity and VE standards	No, not applicable.
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category	Yes.
§ 63.7(a)(1) and (2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations for emission limits and work practice standards; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(a)(4)	Notification of Delay in Performance Testing Due To Force Majeure.	Must notify Administrator of delay in performance testing due to force majeure.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling.	Must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance (QA)/ Test Plan.	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions.	No, § 63.8595 specifies requirements.
		Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.
§ 63.7(e)(2) and (3)	Conditions for Conducting Performance Tests.	Must conduct according to subpart and EPA test methods unless Administrator approves alternative; must have at least three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§ 63.7(e)(4)	Testing under Section 114	Administrator's authority to require testing under section 114 of the Act.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in subpart	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved]		No.
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	No, not applicable.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2) and (3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintenance consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM.	Reporting requirements for SSM when action is described in SSMP.	No.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements.	No.
§ 63.8(c)(2) and (3)	Monitoring System Installation.	Must install to get representative emission and parameter measurements.	Yes.
§ 63.8(c)(4)	CMS Requirements	Requirements for CMS	No, § 63.8600 specifies requirements.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	COMS minimum procedures	No, not applicable.
§ 63.8(c)(6)	CMS Requirements	Zero and high level calibration check requirements	Yes.

TABLE 9 TO SUBPART KKKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

Citation	Subject	Brief description	Applies to Subpart KKKKK?
§ 63.8(c)(7) and (8)	CMS Requirements	Out-of-control periods	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control	Yes.
§ 63.8(e)	CMS Performance Evaluation.	Requirements for CMS performance evaluation	Yes.
§ 63.8(f)(1) through (5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy test for continuous emission monitoring systems (CEMS).	No, not applicable.
§ 63.8(g)	Data Reduction	COMS and CEMS data reduction requirements	No, not applicable.
§ 63.9(a)	Notification Requirements	Applicability; State delegation	Yes.
§ 63.9(b)	Initial Notifications	Requirements for initial notifications	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	No, not applicable.
§ 63.9(g)(1)	Additional Notifications When Using CMS.	Notification of performance evaluation	Yes.
§ 63.9(g)(2) and (3)	Additional Notifications When Using CMS.	Notification of COMS data use; notification that relative accuracy alternative criterion were exceeded.	No, not applicable.
§ 63.9(h)	Notification of Compliance Status.	Contents; submittal requirements	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applicability; general information	Yes.
§ 63.10(b)(1)	General Recordkeeping Requirements.	General requirements	Yes.
§ 63.10(b)(2)(i)	Records Related to SSM	Recordkeeping of occurrence and duration of startups and shutdowns.	No.
§ 63.10(b)(2)(ii)	Records Related to SSM	Recordkeeping of failures to meet a standard	No. See § 63.8640(c)(2) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the volume of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(b)(2)(iii)	Records Related to SSM	Maintenance records	Yes.
§ 63.10(b)(2)(iv) and (v)	Records Related to SSM	Actions taken to minimize emissions during SSM	No.
§ 63.10(b)(2)(vi) through (xii) and (xiv).	CMS Records	Records when CMS is malfunctioning, inoperative or out-of-control.	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	No, not applicable.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1) through (15)	Records	Additional records for CMS	No, §§ 63.8575 and 63.8640 specify requirements.
§ 63.10(d)(1) and (2)	General Reporting Requirements.	Requirements for reporting; performance test results reporting.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	Requirements for reporting opacity and VE	No, not applicable.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	No. See § 63.8635(f) for malfunction reporting requirements.
§ 63.10(e)(1) through (3)	Additional CMS Reports	Requirements for CMS reporting	No, §§ 63.8575 and 63.8635 specify requirements.

TABLE 9 TO SUBPART KKKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

Citation	Subject	Brief description	Applies to Subpart KKKKK?
§ 63.10(e)(4)	Reporting COMS data	Requirements for reporting COMS data with performance test data.	No, not applicable.
§ 63.10(f)	Waiver for Recordkeeping/ Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirement for flares	No, not applicable.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses for reports, notifications, requests	Yes.
§ 63.14	Incorporation by Reference	Materials incorporated by reference	Yes.
§ 63.15	Availability of Information	Information availability; confidential information	Yes.
§ 63.16	Performance Track Provisions.	Requirements for Performance Track member facilities	Yes.

[FR Doc. 2014–28125 Filed 12–17–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 79 Thursday,
No. 243 December 18, 2014

Part III

Department of Education

Applications for New Awards; Student Support Services Program; Notice

DEPARTMENT OF EDUCATION

Applications for New Awards; Student Support Services Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Student Support Services Program (SSS Program).

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.042A.

DATES:

Applications Available: December 18, 2014.

Deadline for Transmittal of Applications: February 2, 2015.

Deadline for Intergovernmental Review: April 2, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the SSS Program is to increase the number of disadvantaged, low-income college students, first-generation college students, and college students with disabilities in the United States who successfully complete a program of study at the postsecondary level. The support services that are provided should increase the retention and graduation rates for these categories of students and facilitate their transfer from two-year to four-year colleges and universities. The support services should also foster an institutional climate that supports the success of students who are limited English proficient, students from groups that are historically underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths, students who are in foster care or are aging out of the foster care system, and other disconnected students. Student support services should also improve the financial and economic literacy of students.

Priorities: This notice contains two competitive preference priorities. Competitive Preference Priority 1(a) is from the Department's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2014 (79 FR 73426). Competitive Preference Priority 1(b) is from 34 CFR 75.266. In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority 2(a) is from Section 402D(c)(1) of the Higher Education Act of 1965, as amended (HEA). Competitive Preference Priority 2(b) is from 34 CFR 75.266.

Note: Applicants must include, in the one-page abstract submitted with the application, a statement indicating which, if any, of the competitive preference priorities are addressed. If the applicant has addressed the competitive preference priorities, this information must also be listed on the SSS Program Profile Form.

Competitive Preference Priorities: For FY 2015 and any subsequent year for which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to 6 additional points to an application depending on how well the application meets these priorities.

The competitive preference priorities are:

Competitive Preference Priority 1(a)—Influencing the Development of Non-Cognitive Factors (Up to 1 Additional Point)

Background: A promising body of research suggests that non-cognitive factors can play an important role in students' academic, career, and life outcomes.[1] Non-cognitive factors include a broad range of behaviors, strategies, and attitudes, such as academic behaviors (including attendance and homework completion), academic mindsets (including a sense of belonging in the academic community and believing that academic achievement improves with effort), perseverance (including tenacity and self-discipline), social and emotional skills (including cooperation, empathy, and adaptability), and approaches toward learning strategies (such as executive functions, attention, goal-setting, curiosity, problem-solving, self-regulating learning, study skills, and the ability to work cooperatively with others).

The development of these skills is critical during the postsecondary years as students face new academic challenges, social comparisons, and stereotypes regarding their potential for success. How students negotiate these changes has major implications for their academic futures. For example, interventions focused on academic mindset have been shown to have a measurable impact on grades and course persistence, as well as on college enrollment and completion among low-income and minority students. Studies have found that students with positive academic mindsets work harder, engage in more productive academic behaviors, and persevere to overcome obstacles to success. Conversely, students with negative mindsets about school or themselves as learners are likely to withdraw from the practices that are essential for academic success and to give up easily when they encounter setbacks or difficulty. Strategies focused on strengthening perseverance and social and emotional skills also have demonstrated positive outcomes. Ideally, over the course of their K–16 school experience, children and young adults will come to see themselves as competent, productive people who are able to contribute meaningfully to their communities and the larger world.

Through Competitive Preference Priority 1(a), the Department encourages applicants to propose strategies focused on the development of non-cognitive skills to improve postsecondary success. The Department is interested in receiving applications with strong plans to develop the non-cognitive skills of students. Applicants addressing this priority should demonstrate how their proposal will improve student outcomes.

The Department is sufficiently interested in this priority topic that we may later seek to partner with successful applicants to conduct research and evaluation.

Priority: Projects that are designed to improve students' mastery of non-cognitive skills and behaviors (such as academic behaviors, academic mindset, perseverance, self-regulation, social and emotional skills, and approaches toward learning strategies) and enhance student motivation and engagement in learning.

[1] Farrington et al. (2012); National Research Council. (2012). *Education for Life and Work: Developing Transferable Knowledge and Skills in the 21st Century.* Committee on Defining Deeper Learning and 21st Century Skills, James W. Pellegrino and Margaret L. Hilton, Editors. Board on Testing and Assessment and Board on Science Education, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, pp. 4–5; Strobel, Karen R. (2012, May). *Academic Motivation and School Engagement and their Links to Academic Achievement: A Follow up Report.* Paper prepared for the William and Flora Hewlett Foundation. Palo Alto, CA: John W. Gardner Center; Stephens, N.M., Hamedani, M.G., & Destin, M. (2014). *Closing the social-class achievement gap: A difference-education intervention improves first-generation students' academic performance and all students' college transition.* Psychological Science. *http://www.psychology.northwestern.edu/documents/destin-achievement.pdf;* Walton, G.M. & Cohen, G.L. (2011). *A brief social-belonging intervention improves academic and health outcomes of minority students.* Science, 331, 1447–1451. *http://web.stanford.edu/~gwalton/home/Publications_files/Walton_Cohen_2011_Science_1.pdf.*

Competitive Preference Priority 1(b)—Strategies To Influence the Development of Non-Cognitive Factors Supported by Moderate Evidence of Effectiveness (Up to 2 Additional Points)

In recent years, the Department has placed an increasing emphasis on promoting evidence-based practices through our grant competitions. We believe that encouraging applicants to focus on proven strategies can only enhance the quality of our competitions and the outcomes of students who participate in our programs. Accordingly, for those who apply under Competitive Preference Priority 1(a), Influencing the Development of Non-cognitive Factors, we give additional competitive preference to applications that submit moderate evidence of effectiveness supporting their proposed strategy for addressing non-cognitive factors.

Priority: Projects that influence the development of non-cognitive factors using strategies that are supported by moderate evidence of effectiveness (as defined in this notice).

Note: An applicant addressing Competitive Preference Priority 1(a) can earn one point based on the extent to which their project is designed to influence the development of non-cognitive factors. Through Competitive Preference Priority 1(b), applicants can earn two additional points by demonstrating that their strategy to address non-cognitive factors is based on research that meets the moderate evidence of effectiveness standard. Applicants seeking to address Competitive Preference Priority 1(b) should identify a citation for one study that meets the definition of moderate evidence of effectiveness. Relevant studies will be reviewed to determine if they meet the definition of moderate evidence of effectiveness, including What Works Clearinghouse (WWC) standards, with or without reservations, which is necessary to fulfill the definition of moderate evidence of effectiveness. The WWC Procedures and Standards Handbook (Version 3.0, March 2014), can be found at:*http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.* Applicants may submit a citation for a study that supports the applicants' proposed strategies that has already been determined by the Department to meet the moderate evidence of effectiveness standard, or a study that has not yet been reviewed by the Department but that the applicant thinks will meet the moderate evidence of effectiveness standard. A summary of studies of non-cognitive strategies that the Department has determined meets the moderate evidence of effectiveness standard is provided in the Appendix to this Notice.

Applicants proposing strategies to improve non-cognitive outcomes should implement the intervention from their supporting study as closely as possible and describe in the narrative response to the priority how they will do so. Where modifications to the cited intervention will be made to account for student or institutional characteristics, resource limitations, or other special factors, the applicant should provide a justification or basis for the modifications in the narrative response to the priority.

The link for the citation submitted for Competitive Preference Priority 1(b) should be provided on the Abstract, as well as the SSS Program Profile Form. Applicants should specify in their narrative response to this priority the findings within the study that are cited as moderate evidence of effectiveness for the proposed strategies to address non-cognitive factors and ensure that the citation and link are from a publicly or readily available source.

Competitive Preference Priority 2(a)—Providing Individualized Counseling for Personal, Career, and Academic Matters (Up to 1 Additional Point)

Background: Through Competitive Preference Priority 2(a), the Department encourages applicants to propose strategies focused on individualized counseling, because emerging research suggests that certain kinds of such counseling can improve students' academic performance or persistence.[2] The Department is interested in receiving applications with strong plans to provide individualized counseling to students for personal, career, or academic matters. Applicants addressing this priority should demonstrate how their proposal will improve student outcomes. The Department is sufficiently interested in this priority topic that we may later seek to partner with successful applicants to conduct research and evaluation.

Priority: Projects that will provide individualized counseling for personal, career, and academic matters by assigned counselors.

Competitive Preference Priority 2(b)—Individual Counseling Activities Based on Moderate Evidence of Effectiveness (2 Additional Points)

Background: In recent years, the Department has placed an increasing emphasis on promoting evidence-based practices through our grant competitions. We believe that encouraging applicants to focus on proven strategies can only enhance the quality of our competitions and the outcomes of students who participate in our programs. Accordingly, for those who apply under Competitive Preference Priority 2(a), Providing Individualized Counseling for Personal, Career, and Academic Matters, we give additional competitive preference to applications that submit moderate evidence of effectiveness supporting their proposed strategy for providing individualized counseling.

Priority: Projects that provide individualized counseling using strategies supported by moderate evidence of effectiveness (as defined in this notice).

Note: An applicant addressing Competitive Preference Priority 2(a) can earn one point based on the extent to which their project is designed to provide individualized counseling. Through Competitive Preference Priority 2(b), applicants can earn two additional points by demonstrating that their individualized counseling strategies are based on research that meets the moderate evidence of effectiveness standard. Applicants seeking to address Competitive Preference Priority 2(b) should identify a citation for one study that meets the definition of moderate evidence of effectiveness. Relevant studies will be reviewed to determine if they meet the definition of moderate evidence of effectiveness, including WWC standards, with or without reservations, which is necessary to fulfill the definition of moderate evidence of effectiveness. The WWC Procedures and Standards Handbook. The WWC Procedures and Standards Handbook (Version 3.0, March 2014), can be found at: *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.* Applicants may submit a citation for a study that supports the applicants' proposed strategies that has already been determined by the Department to meet the moderate evidence of effectiveness standard, or a study that has not yet been reviewed by the Department but that the applicant thinks will meet the moderate evidence of effectiveness standard. A summary of studies of individualized counseling strategies that the Department has already determined meets the moderate evidence of effectiveness standard is provided in the Appendix to this Notice.

Applicants' proposed individualized counseling strategies should implement the intervention described from their supporting study as closely as possible and describe in the narrative response to the priority how they will do so. Where modifications to the cited intervention will be made to account for student or institutional characteristics, resource limitations, or other special factors, the applicant should provide a justification or basis for the modifications in the narrative response to the priority.

The link for the citation submitted for Competitive Preference Priority 2(b) should be provided on the Abstract, as well as the SSS Program Profile Form.

[2] See, for example, Bettinger, E.P., & Baker, R. (2011). *The effects of student coaching in college: An evaluation of a randomized experiment in student mentoring. https://cepa.stanford.edu/sites/default/files/bettinger_baker_030711.pdf.*

Applicants should specify in their narrative response to this priority the findings within the study that are cited as moderate evidence of effectiveness for the proposed strategies to provide individualized counseling intervention and ensure that the citation and link are from a publicly or readily available source.

Definitions: These definitions are from the Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2014 (79 FR 73426) and from 34 CFR 77.1.

Moderate evidence of effectiveness means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the WWC Evidence Standards without reservations,[3] found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the WWC), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(ii) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the WWC Evidence Standards with reservations,[4] found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the WWC), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample (Note: Multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet WWC Evidence Standards with reservations [5] (they cannot meet WWC Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet WWC Evidence Standards without reservations.[6]

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–14.

Applicable Regulations: This NIA is being published before the Department adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR part 200. We expect to publish interim final regulations that would adopt those requirements before December 26, 2014, and make those regulations effective on that date. Because grants awarded under this NIA will likely be made after ED adopts the requirements in 2 CFR part 200, we list as applicable regulations both those that are currently effective and those that will be effective at the time ED makes grants.

The current regulations follow: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485.

At the time we award grants under this NIA, the following regulations will apply: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations as adopted in 2 CFR part 3485 and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as adopted in 2 CFR part 3474.

Regardless of the timing of publication, the following also apply to this NIA: (a) The regulations for this program in 34 CFR part 646 and (b) the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2014 (79 FR 73426).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $838,252,000 for the Federal TRIO Programs for FY 2015, of which we intend to use an estimated $265,706,546 for new SSS awards under this competition and $23,966,448 for continuation awards to current SSS grantees. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for the Federal TRIO Programs. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $220,000–$360,000.

Estimated Average Size of Awards: $282,000.

Maximum Award: We will reject any application that proposes a budget exceeding the maximum amount listed for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum award amount through a notice published in the **Federal Register**.

FOR APPLICANTS NOT CURRENTLY RECEIVING A SSS PROGRAM GRANT

Type of project	Maximum amount *
Regular SSS Project Serving a Minimum of 140 Student Participants	$220,000
Regular SSS Project Serving a Minimum of 100 Student Participants with Disabilities	220,000
English as a Second Language (ESL) SSS Project Serving a Minimum of 140 Student Participants	220,000
Science, Technology, Engineering and Mathematics (STEM) and Health Science SSS Project Serving a Minimum of 120 Student Participants	220,000
Teacher Preparation SSS Project Serving a Minimum of 140 Student Participants	220,000

[3] The What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), can be found at: *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.*

[4] Id.

[5] Id.

[6] Id.

FOR APPLICANTS NOT CURRENTLY RECEIVING A SSS PROGRAM GRANT—Continued

Type of project	Maximum amount*
Veterans SSS Project Serving a Minimum of 120 Student Participants	220,000

*Note: For applicants proposing to serve fewer than the minimum number of student participants specified in the above table, the maximum award amount that may be requested is an amount equal to: $1,571 per student participant for Regular, ESL, and Teacher Preparation projects; $2,200 per student participant for Disabled projects; $1,833 per student participant for STEM (including Health Science) and Veterans projects.

For Applicants Currently Receiving a SSS Program Grant

The maximum award amount is the greater of: (a) $220,000 or (b) 100 percent of the applicant's base award amount for FY 2012.

For any currently funded applicant that proposes to serve fewer students than it served in FY 2012, the maximum award amount that may be requested is the amount that corresponds with the cost per participant previously established for the project in FY 2012.

Note: For an applicant currently receiving an individual SSS Program grant that has merged into another IHE that is also receiving an individual SSS Program grant, the maximum award amount for the applicant (the merged institution) is 100 percent of the combined FY 2012 base grant award amounts for both institutions. For grantees that have merged, the applicant must propose to serve the combined number it served in FY 2012.

Estimated Number of New Awards: 1,026.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education or combinations of institutions of higher education.

2. *Cost Sharing or Matching:* Section 402D(d)(4) of the HEA requires that all successful applicants that use SSS Program funds to provide grant aid to students pursuant to section 402D(d)(1) of the HEA must provide matching funds, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of the SSS Program funds used for this aid. This matching requirement does not apply to a grant recipient that is an IHE eligible to receive funds under Part A or Part B of Title III or under Title V of the HEA.

3. *Other:* An applicant may submit multiple applications if each separate application describes a project that will serve a different campus or a different population (Section 402(c)(5)of the HEA). Under section 402A(h)(1) of the HEA, the term ''different campus'' means a site of an IHE that—(1) is geographically apart from the main campus of the institution; (2) is permanent in nature and (3) offers courses in educational programs leading to a degree, certificate, or other recognized educational credential (Section 402(h)(1)of the HEA).

Under section 402A(h)(2) of the HEA, the term ''different population'' means a group of individuals that an eligible entity desires to serve through an SSS grant that is separate and distinct from any other population that the entity has applied to serve using Federal TRIO Program funds, or, while sharing some of the same needs as another population that the eligible entity has applied to serve using Federal TRIO Program funds, has distinct needs for specialized services. To implement the requirement in Section 402(h)(2) of the HEA for this competition, the Secretary is designating the populations to be served as: Participants who meet the specific requirements for SSS services (''regular SSS grants''), participants with disabilities (''disabled grants''), participants who need ESL services (''ESL grants''), participants receiving services in the STEM fields (''STEM grants''), participants receiving Teacher Preparation Services (''Teacher Preparation grants''), and participants who have served in the armed forces (''Veterans grants''). These different populations need different types of services. Accordingly, the Secretary has determined that projects serving these different populations should be subject to different standards for the minimum number of participants. An applicant may submit more than one application as long as each application proposes to serve a different population. Any applicant that submits more than one application must explain why the different population of participants cannot be served by the project in the applicant's other application(s). For project types other than a regular SSS project, an applicant must propose to serve 100% of the students in the specific project type.

IV. Application and Submission Information

1. *Address to Request Application Package:* ReShone Moore, Ph.D., U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7893 or by email: *reshone.moore@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the project narrative (Part III), which includes the budget narrative, to no more than 65 pages, using the following standards. However, any application addressing the competitive preference priorities may include up to four additional pages for each subpart of each of these priorities (1(a) and 1(b) and 2(a) and 2(b)), if addressed. Those 16 additional pages, eight total for each priority must be used to discuss how the application meets the competitive preference priority. The additional pages allotted to address priorities cannot be used for or transferred to the project narrative or any section of the application.

Note: For the purpose of determining compliance with the page limit, each page on which there is text or graphics will be counted as one full page.

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1'' margin.
- Double space (no more than three lines per vertical inch) all text in the project narrative.
- Single space is appropriate for titles, headings, footnotes, quotations, references, and captions, as well as all text in figures, charts and graphs.
- You should also include a table of contents in the project narrative, which will not be counted toward the page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I—the Application for Federal Assistance face sheet (SF 424); Part II—the Budget Information Summary form (ED Form 524); Part III–A—the SSS Program Profile Form; Part III–B—the one-page Project Abstract form; and Part

IV—the Assurances and Certifications. If you include any attachments or appendices, these items will be counted as part of Part III—the Project Narrative for the purpose of the page-limit requirement. You must include your complete response to the selection criteria and priorities in Part III—the Project Narrative.

We will reject your application if you exceed the page limit, or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 18, 2014.

Deadline for Transmittal of Applications: February 2, 2015.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in ssection VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 2, 2015.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 646.31. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov. and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the SSS Program, CFDA Number 84.042A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Student Support Services Program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.042, not 84.042A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application

that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document Format) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Eileen S. Bland, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.042A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.042A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 646.21 and are listed in the application package.

Note: Under the ''Objectives'' selection criterion, 34 CFR 646.21(b), worth eight (8) points, applicants must address the standardized objectives in 34 CFR 646.21(b)(1) through (4) related to the participants' academic achievements, including retention, good academic standing, graduation, and transfer rates. The graduation objective should be measured by cohorts of students who become SSS Program participants in each year of the project and should be compared to a relevant and valid comparison group. The graduation, certificate, and transfer rates for two-year institutions should be measured over a four-year period and that of four-year institutions should be measured over a six-year period.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 646.21. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additionally, in accordance with 34 CFR 646.22, the Secretary will award prior experience points to applicants that have conducted a SSS Program project within the last three Federal government fiscal years, based on their documented experience. Prior experience points, if any, will be added to the application's averaged reader score to determine the total score for each application. Of the applications that address competitive preference priorities 1(b) and 2(b), highly rated applications from the review process, which at a minimum will include those whose funding outcomes could be affected by the awarding of points under competitive preference priorities 1(b) and 2(b), will then have their supporting studies reviewed to determine if the cited studies submitted by the applicant meet the Moderate Evidence of Effectiveness standard and are relevant to the proposed strategies to address non-cognitive factors and/or individualized counseling under competitive preference priorities 1(a) and 2(a).

If there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the SSS Program.

3. *Special Conditions:* Under current 34 CFR 74.14 and 80.12 and, when grants are made under this NIA, 2 CFR 3574.10, the Secretary may impose specific conditions and, in appropriate circumstances, high risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable or, when grants are awarded, the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

V. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The success of the SSS Program is measured by the percentage of SSS participants that complete a program of postsecondary education. The following performance measures have been developed to track

progress toward achieving program success:

1. The percentage of SSS Program participants who are still enrolled at the beginning of the next academic year or have earned a degree at the grantee institution or transferred from a two-year to a four-year institution.

2. The percentage of first-time college students served by the SSS Program who graduate from the grantee institution on time—within four years for the bachelor's degree and within two years for the associate's degree.

3. The percentage of SSS participants taking one or more remedial course(s) who attain an associate's degree or transfer from a two-year to a four-year institution within three years or graduate with a bachelor's degree within five years from the grantee institution.

4. The cost per successful outcome.

All SSS Program grantees are required to submit an annual performance report documenting the persistence and degree attainment of their participants. Since students take different amounts of time to complete their degrees, multiple years of performance report data are needed to determine the degree completion rates of SSS Program participants. The Department will aggregate the data provided in the annual performance reports from all grantees to determine the overall program accomplishment level.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made substantial progress toward meeting the objectives in its approved application. This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VI. Agency Contacts

FOR FURTHER INFORMATION CONTACT: ReShone Moore, Ph.D., U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7893 or by email: *reshone.moore@ed.gov* or, if unavailable, Lavelle Wright, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7674 or by email: *Lavelle.wright@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 16, 2014.

Lynn B. Mahaffie,

Acting Assistant Secretary for Postsecondary Education.

Appendix

Summaries of Relevant Studies Reviewed by the Department and That Meet the Standard for Moderate Evidence of Effectiveness

Strategies To Develop Non-Cognitive Factors

Walton, G.M. & Cohen, G.L. (2011). *A brief social-belonging intervention improves academic and health outcomes of minority students.* Science, 331, 1447–1451. *http://web.stanford.edu/~gwalton/home/Publications_files/Walton_Cohen_2011_Science_1.pdf.*

This study examined the effects of a series of connected activities, together lasting about an hour, that aimed to strengthen college freshmen's sense of social belonging and academic performance. First, the freshmen were given a narrative that described social adversity as an experience common to students from different racial-ethnic and gender groups and short lived during the college-adjustment process. Second, they read a survey report describing how older students of different racial-ethnicity and gender backgrounds overcame their freshmen year worries about whether they belonged in college. Finally, to encourage the ''saying is believing'' phenomenon, the freshmen were asked to write an essay about and video-record how their experiences in college were similar to those described in the survey report.

The combination of activities had a positive impact on the grade point averages (GPA) of African-American students (though not white students) in the years afterwards, tripling the percentage of African American students earning GPAs in the top 25 percent of their class and reducing the percentage performing in the bottom 25 percent. Three years after the intervention, at the end of their time in college, participating African American students reported less belonging uncertainty, self-doubt, and tendency to associate their college experiences to racial stereotypes.

Stephens, N.M., Hamedani, M.G., & Destin, M. (2014*). Closing the social-class achievement gap: A difference-education intervention improves first-generation students' academic performance and all students' college transition.* Psychological Science. *http://www.psychology.northwestern.edu/documents/destin-achievement.pdf.*

Researchers investigated the impact of attending a moderated panel discussion for incoming freshmen on their adjustment to college. The panel featured demographically diverse college seniors who responded to questions about their experience of and adjustment to college. All incoming first-generation college students in this study, students whose parents did not have 4-year college degrees, and a sample of incoming non-first-generation college students were invited to participate in the study.

Students attended one of eight moderated panel discussions, all featuring the same panel of eight demographically diverse college seniors (three were first generation, five were non-first generation). Panelists were instructed to respond to questions differently depending upon the group of students in attendance. For the students in the intervention group, the panelists' responses illustrated how their social class backgrounds both positively and negatively shaped their college experiences and influenced the strategies they adopted for success in college. For students in the comparison group, the panelists' stories included general content and did not highlight the students' different backgrounds. After the panel, all students were invited to complete a survey and create a video testimonial about the panel's main teachings.

At the end of their freshman year, the mean GPA of first-generation students receiving the intervention was 3.47 in comparison to 3.17 for first-generation students that did not receive the intervention.

Strategies To Provide Individualized Counseling

Bettinger, E.P., & Baker, R. (2011). *The effects of student coaching in college: An evaluation of a randomized experiment in student mentoring. https://cepa.stanford.edu/sites/default/files/bettinger_baker_030711.pdf.*

This study examined whether InsideTrack, a personalized student coaching service for college students, increased rates of staying in and graduating from college. Each participating institution selected potential students to participate based on their own criteria (*e.g.* full-time or part-time, new students or upperclassmen, etc.).

Coaches contacted students via phone, email, text messages, and social networking sites over the course of two semesters to identify strategies for overcoming barriers to academic success. Coaches used predictive algorithms that took into account students' constraints inside and outside of school (*e.g.* personal time commitments, primary caregiving responsibilities, and financial obligations) to guide and personalize conversations with students. Potential students were randomly assigned to receive InsideTrack and compared to similar students who did not receive additional services.

The study found that students assigned to receive InsideTrack were significantly more likely than students in the comparison group to remain enrolled at their institutions. After six months, 81 percent of students who received InsideTrack were still enrolled, compared to 77 percent of students who did not. The proportions enrolled were 66 percent and 51 percent, respectively, after 12 months and 44 percent and 37 percent after 18 months.

[FR Doc. 2014–29769 Filed 12–17–14; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL REGISTER

Vol. 79 Thursday,
No. 243 December 18, 2014

Part IV

The President

Proclamation 9221—70th Anniversary of the Battle of the Bulge

Federal Register
Vol. 79, No. 243
Thursday, December 18, 2014

Presidential Documents

Title 3—

The President

Proclamation 9221 of December 15, 2014

70th Anniversary of the Battle of the Bulge

By the President of the United States of America

A Proclamation

By the winter of 1944, the United States and Allied forces had stormed the beaches of Normandy, thundered into Europe, and liberated Paris, turning the tide in the struggle against the forces of oppression. With the fate of freedom in peril, millions of Americans went to fight for people they had never met to defend ideals they could not live without. But as Americans and our allies advanced through the Ardennes Forest region of Belgium and Luxembourg, German forces launched a desperate and massive assault, attacking the poorly-supplied and heavily-outnumbered Allied front during the early hours of December 16, 1944. Against improbable odds, patriots of exceptional valor and remarkable courage beat back Hitler's armies and achieved a crucial victory at the Battle of the Bulge, marking the beginning of the end of a world war.

The Battle of the Bulge was one of the United States largest and bloodiest encounters of the Second World War. Over the course of more than a month, some 500,000 American service members fought through snow and bitter winter conditions. In extraordinarily difficult circumstances, our Armed Forces faced down bullets and German tanks. From the grip of hatred and tyranny, they won a victory for liberty and freedom. But our triumph came at a tremendous cost; over 76,000 Americans were killed, wounded, or missing in action.

On the 70th anniversary of the Battle of the Bulge, we are called to do more than commemorate a victory. We must honor the sacrifice of a generation who defied every danger to free a continent from fascism. As we salute the unfailing dedication of a free people, we tell their story so as to commit it to the memory of our Nation. The world will never forget the heroes who stepped forward to secure peace and prosperity far from home, and we will always remember those who gave their last full measure of devotion.

The warriors who defended the promise of liberty during the Battle of the Bulge are an inspiring and heroic link in an unbroken chain that has made America the greatest force for freedom the world has ever known. Today, we lift up their memories and carry forward the proud legacy of the veterans who gave their all and in doing so, changed the course of human history.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Tuesday, December 16, 2014, as the 70th Anniversary of the Battle of the Bulge. I encourage all Americans to observe this solemn day of remembrance with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of December, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–29822
Filed 12–17–14; 11:15 am]
Billing code 3295–F5

Reader Aids

Federal Register

Vol. 79, No. 243

Thursday, December 18, 2014

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, DECEMBER

70995–71294 1
71295–71620 2
71621–71954 3
71955–72106 4
72107–72538 5
72539–72966 8
72967–73190 9
73191–73460 10
73461–73800 11
73801–74014 12
74015–74584 15
74585–75042 16
75043–75416 17
75417–75734 18

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. I 74654

2 CFR

Proposed Rules:
2700 73853

3 CFR

Proclamations:
9198 72539
9214 71621
9215 ..... 71951, 72541
9216 ..... 71953, 72543
9217 72537
9218 73799
9219 74013
9220 75415
9221 75733

Executive Orders:
11030 (amended by EO13683) 75041
13653 (amended by EO13683) 75041
13673 (amended by EO13683) 75041
13682 73459
13683 75041

Administrative Orders:
Presidential Determinations:
No. 2015–02 of November 21, 2014 71619
No. 2015–03 of December 3, 2014 74009

5 CFR

532 74585
890 75043
2641 71955

Proposed Rules:
430 73239
532 72997
534 73239
890 71695
892 71695

7 CFR

15c 73191
319 74585
361 74585
718 74561
987 72967
1412 74561
1416 74561
1423 70995
1437 74561
1466 73954
3550 74015

Proposed Rules:
15c 73245
27 74647
900 75006
318 71973
319 ..... 71703, 71973
915 71031
1150 75006
1160 75006
1205 75006
1206 75006
1207 75006
1208 75006
1209 75006
1210 75006
1212 75006
1214 75006
1215 75006
1216 75006
1217 75006
1218 75006
1219 75006
1220 75006
1221 75006
1222 75006
1230 75006
1250 75006
1260 75006
1280 75006

9 CFR

93 70997
94 70997
95 70997
145 71623
146 71623
317 71007
381 71007

Proposed Rules:
327 75073

10 CFR

50 73461
52 71295
72 74594
429 71624
431 ..... 71624, 74491
1708 71009

Proposed Rules:
429 74894
430 ..... 71705, 71894, 73503, 74894
431 ..... 71710, 73246
951 75076

11 CFR

Proposed Rules:
100 75455

12 CFR

5 75417
30 74595
46 71630
210 ..... 72107, 72112
1238 72120

1251.....74595
Proposed Rules:
3.....75455
217.....75455, 75473
324.....75455
1024.....74175
1026.....74175

13 CFR

121.....71296
Proposed Rules:
103.....73853
124.....73853
134.....73853

14 CFR

25.....73462, 73469
29.....75423
39.....71296, 71300, 71302, 71304, 71308, 72121, 72124, 72127, 72132, 72968, 73801, 73803, 73805, 73808, 73812, 73814, 74597, 74599, 74603, 74605
61.....71634
65.....74607
71.....71309, 71310, 71311, 71312, 72135
73.....74016
95.....73472
97.....71639, 71641, 71646, 71652
117.....72970
121.....72970
141.....71634
Proposed Rules:
25.....75496
39.....71031, 71033, 71037, 71363, 72562, 72564, 73252, 74032, 74035, 74037, 74038, 75100
71.....71364, 71365, 71710, 72998, 73853, 73854, 74042

15 CFR

730.....71013
734.....71013
736.....71013
742.....71013
744.....71013, 75044
745.....71013
748.....71014
774.....75044
902.....71313, 71510

16 CFR

Proposed Rules:
1422.....71712

17 CFR

240.....72252
242.....72252
249.....72252
420.....73408
Proposed Rules:
1.....71973
15.....71973
17.....71973
19.....71973
32.....71973
37.....71973
38.....71973
140.....71973
150.....71973

18 CFR

154.....75047
806.....75428

21 CFR

11.....71156, 71259
101.....71156, 71259, 73201
201.....72064
510.....74018
520.....74018, 74021
522.....74018
558.....74018
Proposed Rules:
201.....75506
606.....75506
610.....75506

24 CFR

5.....74612
232.....74612
Proposed Rules:
891.....73507
892.....73507

25 CFR

Proposed Rules:
81.....75103
82.....75103

26 CFR

1.....73817

28 CFR

551.....72545

29 CFR

101.....74038
102.....74038
103.....74038
4022.....74021
4044.....71019, 74021

30 CFR

553.....73832
934.....74613

31 CFR

210.....73841
347.....74023
Proposed Rules:
1010.....74073

33 CFR

110.....71654
117.....72140, 72975, 73474, 73842, 74025, 75430
165.....71020, 71022, 74025, 74028, 74030, 75050, 75054
Proposed Rules:
101.....73255
104.....73255
105.....73255
117.....72154
120.....73255
128.....73255
165.....72155, 74044
167.....72157

34 CFR

600.....71957
668.....71957
Proposed Rules:
263.....71930
612.....71820
686.....71820

37 CFR

1.....74618
2.....74633
381.....71319
Proposed Rules:
201.....73856

38 CFR

12.....71319
17.....71653
Proposed Rules:
3.....71366

39 CFR

111.....75058

40 CFR

9.....74639
51.....71663
52.....71025, 71663, 71672, 72548, 72552, 72976, 72979, 73202, 73203, 73205, 73842, 74647, 74818, 75032, 75431
81.....72552, 72981, 75032, 75035
97.....71663, 71674
98.....73750
180.....71676, 72140, 73210, 73214, 73218, 73224, 75059, 75065
300.....71679, 73475, 73478
721.....74639
766.....72984
Proposed Rules:
50.....75234
51.....75234
52.....71040, 71057, 71061, 71369, 71712, 72999, 73272, 73508, 73512, 73525, 73872, 74046, 74655, 74818, 75104, 75234, 75527
53.....75234
58.....75234
60.....73872, 74656
63.....72160, 72874, 72914, 73273, 73872, 74656, 75622
80.....73007
81.....73525
98.....73148
122.....71066
123.....71066
127.....71066
180.....71713, 75107
300.....73538, 73539
403.....71066
501.....71066
503.....71066
721.....75111

41 CFR

60–1.....72985
60–2.....72985
60–3.....72985
60–4.....72985
60–5.....72985

42 CFR

405.....72500
409.....71320
424.....72500
447.....71679
498.....72500
Proposed Rules:
88.....75528
136.....72160
409.....71081
410.....71081
416.....73873
418.....71081, 73873
425.....72760
440.....71081
482.....73873
483.....73873
484.....71081
485.....71081, 73873
488.....71081

44 CFR

64.....74650
67.....73482

46 CFR

Proposed Rules:
401.....71082

47 CFR

1.....72143, 73844
2.....71321, 73486
73.....75433
15.....73486
22.....72143
64.....73227
73.....72153, 73237, 75530
90.....71321
300.....73486
Proposed Rules:
1.....73008, 75530
27.....75530
25.....71714
73.....75113
90.....73009

48 CFR

Ch. 1.....74544, 74554
1.....74544, 75434
9.....74554
22.....74544, 75434
52.....74544, 74554, 75434
203.....73487
204.....73488, 73490, 73492, 74652
209.....73488
212.....73488, 73490
215.....73493
225.....73488, 73490, 73498, 73499
235.....73500
236.....73498
237.....73500
252.....73488, 73490, 73492, 73499, 73500, 74652
701.....74986
702.....74986
703.....74986
704.....74986
705.....74986
706.....74986
707.....74986
709.....74986
711.....74986
713.....74986
714.....74986
715.....74986
716.....74986
717.....74986
719.....74986
722.....74986
725.....74986
726.....74986
727.....74986
728.....74986
731.....74986
732.....74986

733.....74986
736.....74986
742.....74986
745.....74986
747.....74986
750.....74986
752.....74986
1511.....75434
1552.....75434

Proposed Rules:

Ch. 2.....73539
1.....71975
4.....71975
9.....71975
22.....71975
52.....71975, 74558
701.....74681
702.....74681
703.....74681
704.....74681
705.....74681
706.....74681
707.....74681
709.....74681
711.....74681
713.....74681
714.....74681
715.....74681
716.....74681
717.....74681
719.....74681
722.....74681
725.....74681
726.....74681
727.....74681
728.....74681
731.....74681
732.....74681
733.....74681
736.....74681
742.....74681
745.....74681
747.....74681
750.....74681
752.....74681
1609.....74054
1615.....74054
1632.....74054
1652.....74054

49 CFR

392.....75437
396.....75437

Proposed Rules:

380.....73273

50 CFR

17.....73706
224.....73978
229.....73848
300.....71327
622.....71959, 72556, 72996
635.....71029, 71331, 71510, 72557, 74652, 75068
648.....71339, 71960, 72560
660.....71340, 75070, 75449
679.....71313, 71344, 71350
697.....73848

Proposed Rules:

17.....71373, 72450
223.....74954
224.....74954
226.....71714, 73010
300.....71729
622.....72566, 72567
648.....74056
679.....72571, 72593
680.....74058

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.J. Res. 131/P.L. 113–203
Making further continuing appropriations for fiscal year 2015, and for other purposes. (Dec. 13, 2014; 128 Stat. 2070)

Last List December 16, 2014

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.