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DEPARTMENT OF VETERANS AFFAIRS

2 CFR Part 802

38 CFR Parts 41 and 43

RIN 2900-AP03

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Updating References

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, interim final rule amending the Department of Veterans Affairs (VA) regulations governing Office of Management and Budget (OMB) citations and references for federal grant programs. This amendment is necessary to replace obsolete OMB references in VA regulations.

DATES: *Effective Date:* This final rule is effective December 1, 2015.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461-6345. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On December 19, 2014, OMB published a joint interim final rule in the **Federal Register** (79 FR 75871), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Updating References. VA received no public comments and therefore makes no changes to the regulation. Based on the rationale set forth in the interim final rule, VA is adopting the interim final rule as a final rule with no changes.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is 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 governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Orders 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www1.va.gov/orpm/>, by following the link for “VA Regulations Published.”

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final

rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This final rule implements OMB final guidance issued on December 26, 2013, and will not have a significant economic impact beyond the impact of the December 2013 guidance.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.024, VA Homeless Providers Grant and Per Diem Program; 64.026, Veterans State Adult Day Health Care; 64.033, VA Supportive Services for Veteran Families Program; 64.034, VA Assistance to United States Paralympic Integrated Adaptive Sports Program; 64.037, VA U.S. Paralympics Monthly Assistance Allowance Program; 64.038, Grants for the Rural Veterans Coordination Pilot; 64.100, Automobiles and Adaptive Equip for Certain Disabled Vets and Members of the Armed Forces; 64.201, National Cemeteries; and 64.203, State Cemetery Grants.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs,

approved this document on November 18, 2015, for publication.

Dated: November 24, 2015.

Michael P. Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

■ Accordingly, the interim final rule adding 2 CFR part 802 and amending 38 CFR parts 41 and 43, which was published in the **Federal Register** at 79 FR 75871 on December 19, 2014, is adopted as final without changes.

[FR Doc. 2015–30346 Filed 11–30–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 504

RIN 0518–AA05

Changes to Fees and Payment Methods

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Research Service (ARS) increases its Patent Culture Collection charges, and revises the method of payment.

DATES: This rule is effective December 1, 2015.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kurtz, ARS-Budget and Program Management Staff, George Washington Carver Center, 5601 Sunnyside Avenue, Room 4–1106, Beltsville, Maryland, 20705, telephone: (301) 504–4494, email: jeff.kurtz@ars.usda.gov.

SUPPLEMENTARY INFORMATION: Microbial-based agriculture and biotechnology rely on superior production strains, new strains with novel characteristics, and reference strains for comparative purposes. Such strains are often difficult to acquire or are cost prohibitive for many researchers. ARS has a staff dedicated to the acquisition and distribution of microbial germplasm in which patented strains can be deposited in and distributed from its Patent Culture Collection for a one-time fee to cover maintenance and distribution costs.

ARS' Patent Culture Collection receives about 120 patent deposits per year, and distributes about 450 cultures per year. Nearly all of the accessions and distributions are requested by companies, universities, or Government agencies. Currently, ARS charges \$500 for each microbial culture deposit, as set forth in 7 CFR 504.2(a). For each

microbial culture distribution ARS charges \$20, as set forth in 7 CFR 504.2(b). The current fees, which were established in 1985, did not reflect the actual costs of providing materials and services. ARS is increasing these fees to reflect their actual costs of \$670 and \$40, respectively, and to apply the distribution fee to all patent deposits regardless of the date of the deposit.

Currently, payment for deposit and requisition of microbial cultures is made by check, draft, or money order payable to the USDA, National Finance Center, as set forth in 7 CFR 504.3(b). ARS is adding *pay.gov* as a method of payment to assist customers.

The increased fees will enable ARS' Patent Culture Collection to continue its mission of supporting microbiological research and biotechnological innovation, and serve as a repository where patented microbial strains can be deposited and distributed to the scientific community. All of the current services will continue to be offered under the revised fee schedule and method of payment.

This rule was published as a proposed rule for comment on September 2, 2015. See 80 FR 53021, September 2, 2015. No comments were received.

List of Subjects in 7 CFR Part 504

Agricultural research.

For reasons set forth in the preamble, ARS amends 7 CFR part 504 as set forth below:

PART 504—USER FEES

- 1. The authority citation for part 504 continues to read as follows:

Authority: 31 U.S.C. 9701.

- 2. Revise § 504.2 to read as follows:

§ 504.2 Fees for deposit and requisition of microbial cultures.

(a) Depositors of microbial cultures must pay a one-time \$670 user fee for each culture deposited on or after December 1, 2015.

(b) For cultures deposited on or after December 1, 2015, requestors must pay a \$40 user fee for each culture distributed.

- 3. Revise § 504.3 to read as follows:

§ 504.3 Payment of fees.

(a) Payment of user fees must accompany a culture deposit or request.

(b) Payment shall be made by check, draft, money order, or *pay.gov*, payable to USDA, National Finance Center.

Dated: November 23, 2015.

Simon Y. Liu,

Associate Administrator, ARS.

[FR Doc. 2015–30449 Filed 11–30–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 769

RIN 0560–AI32

Highly Fractionated Indian Land (HFIL) Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is implementing the HFIL Loan Program to provide revolving loan funds to eligible intermediary lenders familiar with Indian Lands. The intermediary lenders will provide loan funds to qualified individuals, entities, and tribes to purchase highly fractionated Indian land consistent with the Agricultural Act of 2014 (2014 Farm Bill). FSA is also requesting public comments on the rule.

DATES: *Effective date:* December 1, 2015.

Comment date: We will consider comments that we receive by February 29, 2016.

ADDRESSES: We invite you to submit comments on the rule. In your comment, include the Regulation Identifier Number (RIN), the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Carrie L. Novak, Senior Loan Officer, Loan Making Division, Deputy Administrator for Farm Loan Programs, FSA, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0522, Washington, DC 20250–0522.

Comments will be available online at <http://www.regulations.gov>. A copy of this rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: Carrie Novak; telephone: (202) 720–1643. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The HFIL Loan Program is authorized by the section 5402 of the 2014 Farm

Bill (Pub. L. 113–79), which amended 25 U.S.C. 488 to allow the Secretary to make and insure loans to intermediary lenders to establish revolving loan funds for the purchase of HFIL. FSA will loan funds to intermediary lenders, who will facilitate the purchase and consolidation of fractionated interest by relending the funds to qualified tribes, individuals, and entities. FSA is adding 7 CFR part 769 to specify the requirements for the HFIL Loan Program. The rule provides a way for tribes and tribal members to obtain loans to purchase fractionated interests via intermediary lenders. The intermediary lenders will work with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) on the processes and procedures needed for the ultimate recipients to resolve the undivided interests in the fractionated land. FSA will provide a long term loan to the intermediary lender and will review their reports and agreement to provide oversight of the lender's loan process and procedure; FSA will not provide oversight for the ultimate recipients.

As a result of the General Allotment Act of 1887 (also commonly known as the Dawes Act), Indian reservation land was allotted to individual tribal members. When an allottee died, title ownership was divided among his or her heirs, but the land itself was not partitioned and, as such, each Indian heir received an undivided interest in the land. As each generation passes, the number of owners grows exponentially. This has resulted in the highly fractionated ownership of much of the nation's Indian land. As ownership of Indian land descends from one generation to another, the long standing problem of fractionation continues to worsen as many tracts are owned by hundreds or even thousands of individuals. The ability of the owners to use land decreases as fractionation increases, sometimes to the point where it is nearly impossible to locate the owners or for the known owners to coordinate the use of the property. The HFIL Loan Program will help encourage intermediary lenders to provide loans to individual tribal members in order to resolve the highly fractionated ownership of land.

To ensure the HFIL Loan Program would have the greatest chance of success, FSA held a Tribal Consultation session on December 10, 2014. Recommendations on issues discussed during the Tribal Consultation have been addressed in this rule.

Definitions

Some definitions in this rule originate from other already established laws and

regulations and are used here for consistency. Indian Country uses the definition in 18 U.S.C. 1151. "Native American Tribe" and "Tribal Entity" definitions are consistent with 7 U.S.C. 770, "Indian Tribal Land Acquisition Program." HFIL will be defined as undivided interests held by four or more individuals. The definition in 25 U.S.C. 2201 defines highly fractionated as 50 or more undivided owners. A less constraining definition is needed for this rule in order for the HFIL Loan Program to effectively meet the objectives of consolidating fractionated interests. Tribal Consultation indicated that not all fractionated parcels have 50 or more owners and using the strict definition could exclude the parcels from the HFIL Loan Program.

In addition, § 761.2 needs to be revised to specify that the products of tree farming and the products of other plant and animal production are agricultural commodities. Therefore, this rule also revises the definition of "Agricultural Commodity" in § 761.2 as a conforming change. The intention of the list of items that are considered agricultural commodities has not changed; it is strictly correcting the language in the definition.

Intermediary Lenders

Through Tribal Consultation, it became apparent to FSA that the most important characteristics of an intermediary lender are the knowledge and familiarity of working with Indian Country and experience working with BIA. The list of entities in § 769.103 should be flexible enough to include any qualifying entity interested in participating in the HFIL Loan Program.

FSA will develop guidelines for and provide loan funds to the intermediary lenders, who will facilitate the purchase and consolidation of fractionated interest by relending the funds to qualified tribes, individuals, and entities. FSA will establish criteria in § 769.103(b) and (c) for the intermediary lender that will be tied to the organization's demonstrated skills, ability, and knowledge of working with Indian land. The intermediary lender will establish eligibility criteria for the ultimate recipient as restricted by this rule in § 769.104.

An ultimate recipient is an entity or individual that receives a loan from an intermediary's HFIL revolving fund. The eligibility requirements of the ultimate recipient in § 769.104 are restrictive because this program is limited by the provisions of the 2014 Farm Bill; therefore, only Tribes, individual Tribal members, and Tribal entities are eligible to apply. In addition, the 2014 Farm Bill

authorizes the HFIL Loan Program under 25 U.S.C. 488 rather than the Consolidated Farm and Rural Development Act (CONACT, 7 U.S.C. 1911–2008r) where most FSA loan programs are authorized. Accordingly, the FSA loan is to the intermediary lender as authorized under 25 U.S.C. 488 and the CONACT requirements regarding credit elsewhere and maximum loan amounts which typically apply to applicants of the FSA Farm Loan Programs do not apply to the intermediary or the ultimate recipient.

Use of HFIL Loan Funds

The purposes of the HFIL Loan Program are very specific and funds can only be used for the purchase of HFIL and related expenses as specified in §§ 769.105 and 769.106.

The HFIL Loan Program is subject to environmental compliance provisions specified in 7 CFR part 1940, subpart G. Accordingly, each intermediary lender will provide FSA with documentation of its process to address environmental issues on the land to be purchased.

The Tribal Consultation resulted in the strong recommendation that the ultimate recipient be limited in use of loan funds to purchasing land for an agricultural use for the term of the loan. The requirement to qualify for HFIL loans is contained in this rule in § 769.106.

Intermediary Relending Agreement

The rate of interest for the intermediary lender will be set annually, but will not be less than 1 percent and the maximum HFIL loan term is 30 years. The intermediary lender will relend at a rate of interest and term negotiated with the ultimate recipient in a manner detailed in the Intermediary Relending Agreement approved by FSA.

The Intermediary Relending Agreement will contain the policies and procedures that the intermediary lender will follow with respect to the loan and the working relationship with the ultimate recipients. This will provide maximum flexibility for the intermediary lender to work with its ultimate recipient on loan making and loan servicing and will be approved by FSA prior to the HFIL loan closing. The required elements of the agreement are specified in § 769.103(d). The agreement and requirements are similar to the requirements in § 762.106 that must be met by FSA guaranteed lenders seeking certification as a preferred lender.

Revolving Loan Fund

An intermediary lender will be required to have a revolving loan fund.

All HFIL loan funds received by an intermediary lender must be deposited into an HFIL revolving fund account. The account must be fully covered by federal deposit insurance or fully collateralized with U.S. Government obligations and must remain separate from other funds of the intermediary lender. The fund will have two types of deposit accounts, one of which will be HFIL funds from FSA. The other will be comprised of repayments of loans from the ultimate recipients, interest earned on funds in the account and cash, or other short-term marketable assets that the intermediary lender chooses to deposit. Loans made to ultimate recipients will be from both deposit accounts within the revolving fund account, and therefore, loans can be made from initial loan funds from FSA and from repayments. Administrative fees and debt servicing costs will be paid from funds accumulated from repayments by ultimate recipients. Maintenance of the fund is described in § 769.121.

Primary security for the HFIL Loan Program will be in the form of a first lien in the intermediary lender's revolving loan fund. Additional security will be required if needed to fully secure the loan.

FSA determined that yearly monitoring reports would be both necessary for the success of the program and beneficial to the intermediary lender. FSA did not want to be over burdensome in the required type of reporting or audits and therefore adopted an approach similar to what has been successfully used in the Boll Weevil Eradication Loan Program in 7 CFR part 77.

Transfer and Assumption of HFIL Loans

This rule is adding § 769.124 to allow for transfer and assumptions of the HFIL loans in the event that an intermediary lender should want or need to discontinue participation in the HFIL Loan Program.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. This rule is exempt from notice and comment rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). The rule provides a way for tribes

and tribal members to obtain loans to purchase fractionated interests via intermediary lenders as a way to help resolve the longstanding problems relating back to HFIL and will enable tribal members to participate in USDA programs that require land ownership. As noted in this rule, FSA has conducted Tribal consultation and will take public comments following the publication of this rule. Therefore, to help tribal members as soon as possible, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to implement the HFIL Loan Program in time for the 2016 fiscal year. Therefore, this final rule is effective when published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the

National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 1940, subpart G). This rule is to implement the new HFIL Loan Program, a program created by the 2014 Farm Bill. The discretionary provisions needed to implement the HFIL Loan Program, specifically those relating to our loans to the intermediary lenders include the loan making and servicing rules, which will mirror present FLP regulations. One discretionary provision that will not mirror current FSA rules is that implementation will be through an intermediary lender that will relend the funds, an approach that will be a new lending tool for FSA. The process FSA will use to administer the intermediary lending model was vetted through and determined to be acceptable by a Tribal consultation, held on December 10, 2014, at the Intertribal Agricultural Council annual meeting. As the provisions needed to implement this rule are all administrative in nature, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, "Civil Justice Reform." This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule does not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not, to USDA’s knowledge, preempt Tribal law.

Rulemaking to address the issue of HFIL was initially considered as part of the implementation of the Food,

Conservation, and Energy Act of 2008 (Pub. L. 110–246, known as the 2008 Farm Bill). An HFIL loan program was authorized by the 2008 Farm Bill; however, the language required that the program operate as a direct loan program in which FSA would make loans directly to the ultimate recipients. During 2010, USDA held two sets of face-to-face Tribal consultation sessions across the country. FSA Farm Loan Programs held seven Tribal consultation sessions specifically to discuss the HFIL Loan Program (section 5501 of the 2008 Farm Bill) in the following locations on the following dates:

1	Washington DC	August 3, 2010.
2	Pendleton, OR	August 10, 2010.
3	Billings, MT	August 24, 2010.
4	Rapid City, SD	August 25, 2010.
5	Oklahoma City, OK	August 30, 2010.
6	Albuquerque, NM	August 31, 2010.
7	Fairbanks, AK	September 7, 2010.

FSA Farm Loan Programs also participated in an additional seven Tribal consultation sessions across the

country to discuss the 2008 Farm Bill changes, including the HFIL Loan Program. The USDA 2008 Farm Bill

Tribal consultations were held in the following locations on the following dates:

1	Rapid City, SD	October 28 to 29, 2010.
2	Oklahoma City, OK	November 3 to 4, 2010.
3	Minneapolis, MN	November 8 to 9, 2010.
4	Seattle, WA	November 22 to 23, 2010.
5	Nashville, TN	November 29 to 30, 2010.
6	Albuquerque, NM	December 1 to 2, 2010.
7	Anchorage, AK	December 13 to 14, 2010.

Early on, during the 2008 Farm Bill Tribal consultations, FSA heard the various concerns that were raised and thought a workable solution could still be found to implement the HFIL Loan Program; however, as additional concerns continued to be raised and differences were identified in other regions of the country, it became clear that one of the problems was that the 2008 Farm Bill provision was tied to the BIA definition of highly fractionated and as such would also be tied to the BIA procedures for clearing titles, so it was determined that a regulation would not result in a successful program for Indian country. FSA listened and heard concerns about the land being too fractionated, the process being too complicated, the difficulties in really understanding the issues that caused the fractionation, problems with consolidation, and related cultural issues. In addition to the complexity of the BIA process for clearing titles for fractionated land, the results were different across the country. In one example, it took 6 months to clear a title, in another example, clearing a title took 10 years. There were suggestions

that the HFIL Loan Program would work if FSA worked with existing Native American organizations that were already established to consolidate fractionated land and make it a relending program.

As a direct result of everything that FSA heard and learned throughout the 2008 Farm Bill Tribal consultations, FSA provided input for the new requirements in the 2014 Farm Bill to work out a way to make the regulations effective for Indian Country by incorporating the option for an intermediary lender to relend the funds and remove the tie to the BIA definition of highly fractionated.

For the development of this rule, a Tribal consultation was held on December 10, 2014, at the Intertribal Agricultural Council annual meeting. The participants in the Tribal consultation have strongly supported the HFIL Loan Program. During the Tribal consultation, FSA staff asked for and received feedback on the following proposed provisions of the HFIL Loan Program.

HFIL Proposed Provision: Should the HFIL Loan Program be administered as a relending program?

Tribal Consultation Response: Yes.

HFIL Proposed Provision: Should there be a minimum number of acres consolidated with the HFIL Loan Program?

Tribal Consultation Response: No.

HFIL Proposed Provision: Should there be a limited number of intermediary lenders?

Tribal Consultation Response: Yes, given the limited amount of funds, approved intermediary lenders should be limited to no more than two lenders per year.

HFIL Proposed Provision: Should there be any restrictions to the use of funds under the HFIL Loan Program?

Tribal Consultation Response: Yes, funds should be used only for the consolidation of agricultural land.

During the 90-day comment period for this rule, FSA will schedule additional Tribal consultation on the HFIL Loan Program. Although FSA is making this rule effective on publication, FSA will work on changes to the regulation as needed based on comments and

additional input from Tribal consultation.

In addition, to developing the HFIL Loan Program, FSA will continue to engage with Tribal organizations to ensure HFIL Loan Program rules are consistent with Tribal laws and so that the HFIL Loan Program has a maximum opportunity for success. USDA will continue to coordinate with Tribal governmental organizations concerning this rule and will provide appropriate venues, such as webinars and teleconferences, to host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

FSA will not be collecting any information from the ultimate recipients in the HFIL Loan Program. There are some reporting requirements on the HFIL Loan Program activities from intermediary lenders to FSA. The intermediary lenders must allow FSA to review the ultimate recipients' records; the intermediary lenders maintain the records are expected to be a part of customary and usual business practices for the process of loans. Therefore, the burden associated with recordkeeping is excluded. The intermediary lenders will be an entity that meets certain criteria to be established by FSA such as: Has been active in the previous 5 years, and has expertise in technical assistance, is an established financial organization which is regulated by an acceptable state or federal regulatory agency, meets certain capital requirements, and ability

to work with the Bureau of Indian Affairs (BIA). FSA will lend funds to an eligible entity, which will then relend directly to a Tribe or an individual. There are limited entities that will qualify to be intermediary lenders for the HFIL Loan Program. The current annual allocation of \$10 million will not sufficiently fund multiple intermediaries. For the HFIL Loan Program to be effective adequate funds must be available for each intermediary lender to borrow to relend. As discussed above, at the Tribal Consultation held on December 10, 2014, members in attendance strongly suggested that HFIL Loan Program be restricted to no more than 2 intermediary lenders per year for funding due to limited funding. FSA expects to have less than 10 intermediary lenders eligible to participate in the HFIL Loan Program annually. Therefore, this would not require OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E-Government Act Compliance

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

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 769

Loan program-Agriculture, Indians, Land.

For the reasons discussed above, FSA amends 7 CFR chapter VII as follows:

PART 761—FARM LOAN PROGRAM; GENERAL PROGRAM ADMINISTRATION

■ 1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Provisions

■ 2. Amend § 761.2 as follows:

- a. In the introductory text, add “and 769” immediately after “767”; and
- b. In paragraph (b), revise the definition of “Agricultural commodity”.

The revision reads as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

Agricultural commodity means livestock, grains, cotton, oilseeds, dry

beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, nursery crops, nuts, aquacultural species, and the products resulting from: livestock, tree farming, and other plant or animal production as determined by the Agency.

* * * * *

■ 3. Add part 769 to read as follows:

PART 769—HIGHLY FRACTIONATED INDIAN LAND LOAN PROGRAM

Sec.

- 769.101 Purpose.
- 769.102 Abbreviations and definitions.
- 769.103 Eligibility requirements of the intermediary lender.
- 769.104 Requirements of the ultimate recipient.
- 769.105 Authorized loan purposes.
- 769.106 Limitations.
- 769.107 Rates and terms.
- 769.108 Security requirements for HFIL loans and ultimate recipients.
- 769.109 Intermediary lender's application.
- 769.110 Letter of conditions.
- 769.111 Loan approval and obligating funds.
- 769.120 Loan closing.
- 769.121 Maintenance and monitoring of HFIL revolving fund.
- 769.122 Loan servicing.
- 769.123 Transfer and assumption.
- 769.124 Appeals.
- 769.125 Exceptions.

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 488.

§ 769.101 Purpose.

(a) This part contains regulations for loans made by the Agency to eligible intermediary lenders and applies to intermediary lenders and ultimate recipient involved in making and servicing Highly Fractionated Indian Land (HFIL) loans.

(b) The purpose of the HFIL Loan Program is to establish policies and procedures for a revolving loan fund through intermediary lenders for the purchase of HFIL by a Native American tribe, tribal entity, or member of either.

§ 769.102 Abbreviations and definitions

(a) *Abbreviations.* The following abbreviations are used in this part:

BIA—The Department of the Interior's Bureau of Indian Affairs (BIA).

HFIL—Highly Fractionated Indian Land.

(b) *Definitions.* The following definitions are used in this part:

Administrator means the head of the Farm Service Agency or designee.

Highly Fractionated Indian Land (HFIL) means for the purpose of this part only, Highly Fractionated Indian Land is undivided interests held by four or more individuals as a result of ownership or original allotments

passing by state laws of intestate succession for multiple generations.

Indian Country land, communities, and allotments means the following:

(1) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; or

(4) All land, communities, and allotments that meet the definition of 18 U.S.C. 1151.

Intermediary lender means the entity requesting or receiving HFIL loan funds for establishing a revolving fund and relending to ultimate recipients.

Intermediary relending agreement means the signed agreement between FSA and the intermediary that specifies the terms and conditions of the HFIL loan.

Native American tribe means the following:

(1) An Indian tribe recognized by the U.S. Department of the Interior; or

(2) A community in Alaska incorporated by the U.S. Department of the Interior pursuant to the Indian Reorganization Act.

Revolving funds means a fund that has two types of deposit accounts, one of which will be HFIL funds from FSA and the other will be comprised of repayments of loans from the ultimate recipients, interest earned on funds in the account and cash, or other short-term marketable assets that the intermediary lender chooses to deposit. Revolving funds are not considered Federal funds.

Tribal entity means an eligible entity established pursuant to the Indian Reorganization Act.

Ultimate recipient means Native American tribe, tribal entity, or member of either that receives a loan from an intermediary lender's HFIL revolving fund.

Undivided interest means a common interest in the whole parcel of land that is owned by two or more people. Owners of undivided interest do not own a specific piece of a parcel of land; rather they own a percentage interest in the whole.

§ 769.103 Eligibility requirements of the intermediary lender.

(a) *Eligible entity types.* The types of entities that may become an intermediary lender are:

(1) Private and Tribal operated nonprofit corporations;

(2) Public agencies—Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this part;

(3) Indian tribes or tribal corporations; or

(4) Lenders who are subject to credit examination and supervision by an acceptable State or Federal regulatory agency.

(b) *Intermediary lender requirements.* The intermediary lender must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan;

(2) Have a record of successful lending in Indian Country and knowledge and experience working with the BIA. The Agency will assess the applicant staff's training and experience in lending in Indian Country based on recent experience in loan making and servicing with loans that are similar in nature to the HFIL program. If consultants will be used, FSA will assess the staff's experience in choosing and supervising consultants; and

(3) Have an adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary lender.

(c) *The Intermediary Relending Agreement.* The intermediary lender and the Agency will enter into an Intermediary Relending Agreement, satisfactory to the Agency based on:

(1) Loan documentation requirements including planned application forms, security instruments, and loan closing documents;

(2) List of proposed fees and other charges it will assess the ultimate recipients;

(3) The plan for relending the loan funds. The plan must have sufficient detail to provide the Agency with a complete understanding of the complete mechanics of how the funds will get from the intermediary lender to the ultimate recipient. Included in the plan are the service area, eligibility criteria, loan purposes, rates, terms, collateral requirements, a process for addressing environmental issues on property to be purchased, limits, priorities, application process, analysis of new loan requests,

and method of disbursement of the funds to the ultimate recipient;

(4) Loan review plans that specify how the intermediary lender will review the loan request from the ultimate recipient and make an eligibility determination;

(5) An explanation of the intermediary lender's established internal credit review process; and

(6) An explanation of how the intermediary lender will monitor the loans to the ultimate recipients.

§ 769.104 Requirements of the ultimate recipient.

(a) Ultimate recipients must be individual Tribal members, Tribes or eligible Tribal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) The intermediary lender will make this determination in accordance with the Intermediary Relending Agreement.

§ 769.105 Authorized loan purposes.

(a) *Intermediary lender.* Agency HFIL loan funds must be placed in the intermediary's HFIL revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) *Ultimate recipient.* Loans from the intermediary lender to the ultimate recipient using the HFIL revolving fund:

(1) Must be used to acquire and consolidate at least 50 percent of the highly fractionated Indian land parcel and interests in the land. The interests include rights-of-way, water rights, easements, and other appurtenances that would normally pass with the land or are necessary for the proposed operation of the land located within the tribe's reservation;

(2) Must finance land that will be used for agricultural purposes during the term of the loan;

(3) May be used to pay costs incidental to land acquisition, including, but not limited to, title clearance, legal services, archeological or land surveys, and loan closing; and

(4) May be used to pay for the costs of any appraisal conducted in accordance with this part.

§ 769.106 Limitations.

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finders' fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as specified in 7 CFR part 12.

(b) The amount of loan funds used to acquire land may not exceed the current market value of the land as determined by a current appraisal that meets the requirements as specified in 7 CFR 761.7(b)(1).

(c) Agency HFIL loan funds may not be used for payment of the intermediary's administrative costs or expenses. The amount removed from the HFIL revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the HFIL revolving fund and must not exceed the amount approved by the Agency in the intermediary lender's annual loan monitoring report.

(d) No loan to an intermediary lender may exceed the maximum amount the intermediary can reasonably expect to lend to eligible ultimate recipients, based on anticipated demand for loans to consolidate fractioned interests and capacity of the intermediary to effectively carry out the terms of the loan.

§ 769.107 Rates and terms.

(a) Loans made by the Agency to the intermediary lender will bear interest at a fixed rate as determined by the Administrator, but not less than 1 percent per year over the term of the loan.

(1) Interest rates charged by intermediary lender to ultimate recipients on loans from the HFIL revolving fund will be negotiated between the intermediary lender and ultimate recipient, but the rate must be within limits established by the Intermediary Relending Agreement.

(2) The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the revolving fund's debt service costs and administrative costs.

(b) No loan to an intermediary lender will be extended for a period exceeding 30 years. Interest will be due annually but principal payments may be deferred by the Agency.

(1) Loans made by an intermediary lender to an ultimate recipient from the HFIL revolving fund will be scheduled for repayment over a term negotiated by the intermediary lender and ultimate recipient but will not exceed 30 years or the date of the end of the term of the HFIL loan, whichever is sooner.

(2) The term of an HFIL loan must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary lender's Intermediary Relending Agreement.

§ 769.108 Security requirements for HFIL loans and the ultimate recipients.

(a) *HFIL loans.* Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, taking into consideration the intermediary's financial condition, Intermediary Relending Agreement, and management ability. The intermediary is responsible to make loans to ultimate recipients in such a manner that will fully protect the interest of the intermediary and the Government. The Agency will require adequate security, as determined by the Agency, to fully secure the loan, including but not limited to the following:

(1) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by law;

(2) Investments and deposits of the intermediary; and

(3) Capital assets or other property of the intermediary and its members.

(b) *Liens.* In addition to normal security documents, a first lien interest in the intermediary's revolving fund account will be accomplished by a control agreement satisfactory to the Agency. The control agreement does not require the Agency's signature for withdrawals. The depository bank must waive its offset and recoupment rights against the depository account to the Agency and subordinate any liens it may have against the HFIL depository bank account.

(c) *Ultimate recipient.* Security for a loan from an intermediary lender's HFIL revolving fund to an ultimate recipient will be adequate to fully secure the loan as specified in the relending agreement.

(1) The Agency will only require concurrence in the intermediary lender's security requirement for a specific loan when security for the loan from the intermediary lender to the ultimate recipient will also serve as security for an Agency loan.

(2) The ultimate recipient will take appropriate action to obtain and provide security for the loan.

§ 769.109 Intermediary lender's application.

(a) The application will consist of:

(1) An application form provided by the Agency;

(2) A draft Intermediary Relending Agreement and other evidence the Agency requires to show the feasibility of the intermediary lender's program to meet the objectives of the HFIL Loan Program; and

(3) Applications from intermediary lenders that already have an active HFIL loan may be streamlined by filing a new application and a statement that the new loan would be operated in

accordance with the Intermediary Relending Agreement on file for the previous loan. This statement may be submitted at the time of application in lieu of a new Intermediary Relending Agreement.

(4) Documentation of the intermediary lender's ability to administer HFIL in accordance with this part;

(5) Submission of a completed Agency application form;

(6) Prior to approval of a loan or advance of funds, certification of whether or not the intermediary lender is delinquent on any Federal debt, including, but not limited to, Federal income tax obligations or a loan or loan guarantee or from another Federal agency. If delinquent, the intermediate lender must explain the reasons for the delinquency, and the Agency will take such written explanation into consideration in deciding whether to approve the loan or advance of funds;

(7) Prior to approval of a loan or advance of funds, certification as to whether the intermediary lender has been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of application.

(8) Certification of compliance with the restrictions and requirements in 31 U.S.C. 1352, and 2 CFR 200.450 and part 418.

(9) Certification to having been informed of the collection options the Federal government may use to collect delinquent debt.

(b) An intermediary lender that has received one or more HFIL loans may apply for and be considered for subsequent HFIL loans provided:

(1) The intermediary lender is relending all collections from loans made from its revolving fund in excess of what is needed for required debt service, approved administration costs, and a reserve for debt service;

(2) The outstanding loans of the intermediary lender's HFIL revolving fund are performing; and

(3) The intermediary lender is in compliance with all regulations and its loan agreements with the Agency.

§ 769.110 Letter of conditions.

(a) The Agency will provide the intermediary lender a letter listing all requirements for the loan. After reviewing the conditions and requirements in the letter of conditions, the intermediary lender must complete, sign, and return the form provided by the Agency indicating the intermediary lender's intent to meet the conditions. If certain conditions cannot be met, the intermediary lender may propose alternate conditions in writing to the

Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance. The loan request will be withdrawn if the intermediary lender does not respond within 15 days.

(b) At loan closing, the intermediary lender must certify that:

(1) No major changes have been made in the Intermediary Relending Agreement except those approved in the interim by the Agency;

(2) All requirements of the letter of conditions have been met; and

(3) There has been no material change in the intermediary lender or its financial condition since the issuance of the letter of conditions. If there have been changes, the intermediary lender must explain the changes to the Agency. The changes may be waived, at the sole discretion of the Agency.

§ 769.111 Loan approval and obligating funds.

(a) Loan requests will be processed based on the date the Agency receives the application. Loan approval is subject to the availability of funds.

(b) The loan will be considered approved for the intermediary lender on the date the signed copy of the obligation of funds document is mailed to the intermediary lender.

§ 769.120 Loan closing.

(a) *Loan agreement.* A loan agreement or supplement to a previous loan agreement must be executed by the intermediary lender and the Agency at loan closing for each loan setting forth, at a minimum,

(1) The amount of the loan, the interest rate, the term and repayment schedule,

(2) The requirement to maintain a separate ledger and segregated account for the HFIL revolving fund; and

(3) It agrees to comply with Agency reporting requirements.

(b) *Loan closing.* Intermediary lenders receiving HFIL loans will be governed by this part, the loan agreement, the approved Intermediary Relending Agreement, security instruments, and any other conditions that the Agency requires on loans made from the "HFIL revolving fund." The requirement applies to all loans made by an intermediary lender to an ultimate recipient from the intermediary lender's HFIL revolving fund for as long as any portion of the intermediary lender's HFIL loan from the Agency remains unpaid.

(c) *Intermediary lender certification.* The intermediary lender must include in their file a certification that:

(1) The proposed ultimate recipient is eligible for the loan;

(2) The proposed loan is for eligible purposes; and

(3) The proposed loan complies with all applicable laws and regulations.

§ 769.121 Maintenance and monitoring of HFIL revolving fund.

(a) *Maintenance of revolving fund.*

The intermediary lender must maintain the HFIL revolving fund until all of its HFIL obligations have been paid in full. All HFIL loan funds received by an intermediary lender must be deposited into an HFIL revolving fund account. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations. All cash of the HFIL revolving fund must be deposited in a separate bank account or accounts so as not to be commingled with other financial assets of the intermediary lender. All money deposited in such bank account or accounts must be security assets of the HFIL revolving fund. Loans to ultimate recipients must be from the HFIL revolving fund.

(1) The portion of the HFIL revolving fund that consists of Agency HFIL loan funds may only be used for making loans in accordance with § 769.105. The portion of the HFIL revolving fund that consists of repayments from ultimate recipients may be used for debt service, reasonable administrative costs, or for making additional loans;

(2) An intermediary lender may use revolving funds and HFIL loan funds to make loans to ultimate recipients without obtaining prior Agency concurrence in accordance with the Intermediary Relending Agreement;

(3) Any funds in the HFIL revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients;

(4) All reserves and other funds in the HFIL revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses must be deposited in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and will be interest bearing. Any interest earned thereon remains a part of the HFIL revolving fund;

(5) If an intermediary lender receives more than one HFIL loan, it does not need to establish and maintain a separate HFIL revolving loan fund for each loan; it may combine them and maintain only one HFIL revolving fund, unless the Agency requires separate

HFIL revolving funds because there are significant differences in the loan purposes, Intermediary Relending Agreement, loan agreements, or requirements for the loans; and

(6) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves should be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary lender's portfolio of loans. Unless the intermediary lender provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 5 years and then maintained.

(b) *Loan monitoring reviews.* The intermediary lender must complete loan monitoring reviews, including annual and periodic reviews, and performance monitoring.

(1) At least annually, the intermediary lender must provide the Agency documents for the purpose of reviewing the financial status of the intermediary Lender, assessing the progress of utilizing loan funds, and identifying any potential problems or concerns. Non-regulated intermediary lenders must furnish audited financial statements at least annually.

(2) At any time the Agency determines it is necessary, the intermediary lender must allow the Agency or its representative to review the operations and financial condition of the intermediary lender. Upon the Agency requests, the Intermediary must submit financial or other information within 14 days unless the data requested is not available within that time frame.

(c) *Progress reports.* Each intermediary lender will be monitored by the Agency based on progress reports submitted by the intermediary lender, audit findings, disbursement transactions, visitations, and other contact with the intermediary lender as necessary.

§ 769.122 Loan servicing.

(a) *Payments.* Payments will be made to the Agency as specified in loan agreements and debt instruments. The funds from any extra payments will be applied entirely to loan principal.

(b) *Restructuring.* The Agency may restructure the intermediary lender's loan debt, if:

(1) The Government's interest will be protected;

(2) The restructuring will be performed within the Agency's budget authority; and

(3) The loan objectives cannot be met unless the HFIL loan is restructured.

(c) *Default.* In the event of monetary or non-monetary default, the Agency will take all appropriate actions to protect its interest, including, but not limited to, declaring the debt fully due and payable and may proceed to enforce its rights under the loan agreement or any other loan instruments relating to the loan under applicable law and regulations, and commencement of legal action to protect the Agency's interest. The Agency will work with the intermediary lender to correct any default, subject to the requirements of paragraph (b) of this section. Violation of any agreement with the Agency or failure to comply with reporting or other program requirements will be considered non-monetary default.

§ 769.123 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by the Agency. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(b) Available transfer and assumption options to eligible intermediary lenders include the following:

(1) The total indebtedness may be transferred to another eligible intermediary lender on the same terms; or

(2) The total indebtedness may be transferred to another eligible intermediary lender on different terms not to exceed the term for which an initial loan can be made. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(c) The transferor must prepare the transfer document for the Agency review prior to the transfer and assumption.

(d) The transferee must provide the Agency with information required in the application as specified in § 769.109.

(e) The Agency prepared assumption agreement will contain the Agency case number of the transferor and transferee.

(f) The transferee must complete an application as specified in § 769.109(a).

(g) When the transferee makes a cash down-payment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in order of maturity date.

(h) The Administrator or designee will approve or decline all transfers and assumptions.

§ 769.124 Appeals.

Any appealable adverse decision made by the Agency may be appealed upon written request of the intermediary as specified in 7 CFR part 11.

§ 769.125 Exceptions.

The Agency may grant an exception to any of the requirements of this part if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing law or any other applicable law.

Val Dolcini,

Administrator, Farm Service Agency.

[FR Doc. 2015–30331 Filed 11–30–15; 8:45 am]

BILLING CODE 3410-05-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 4, 7, 9, 11, 15, 19, 20, 21, 25, 26, 30, 32, 37, 40, 50, 51, 52, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 76, 81, 95, 100, 110, 140, 150, 170, and 171

[NRC–2015–0239]

RIN 3150–AJ69

Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include renaming the Office of Information Services, renaming the Computer Security Office and removing it as a standalone office, capitalizing the words Tribe, Tribes, and Tribal, correcting a Web site address, correcting a misspelling, removing a submission requirement, correcting an email address, correcting a room number, removing a **Federal Register** notice requirement, and adding missing information collection references. This document is necessary to inform the public of these non-substantive changes to the NRC's regulations.

DATES: This rule is effective December 31, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0239 when contacting the NRC about the availability of information for this final rule. You may obtain publicly-available information related to this final rule by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0239. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: Carol.Gallagher@nrc.gov. For technical questions, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

- *NRC's Agencywide Documents Access and Management System (ADAMS):*

You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it 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: Jill Shepherd-Vladimir, Office of Administration, telephone: 301–415–1230, email: Jill.Shepherd@nrc.gov; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is amending its regulations in parts 1, 2, 4, 7, 9, 11, 15, 19, 20, 21, 25, 26, 30, 32, 37, 40, 50, 51, 52, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 76, 81, 95, 100, 110, 140, 150, 170, and 171 of title 10 of the *Code of Federal Regulations* (10 CFR) to make miscellaneous corrections. These changes include renaming the Office of Information Services, renaming the Computer Security Office and removing it as a standalone office, capitalizing the words Tribe, Tribes, and Tribal, correcting a Web site address, correcting a misspelling, removing a submission requirement, correcting an email address, correcting a room number, removing a **Federal Register** notice requirement, and adding missing information collection references. This document is necessary to inform the public of these non-substantive changes to the NRC's regulations.

II. Summary of Changes

10 CFR Part 1

Remove Office. This final rule removes and reserves § 1.38. The Computer Security Office has been renamed the Information Security Directorate and will now be part of the Office of the Chief Information Officer. The Information Security Directorate information is now included as new paragraphs (h) through (l) under § 1.35. Additional editorial changes have been

made as the result of adding the new paragraphs. Also, in § 1.3, paragraph (c), the phrase “Information and Records Services Division” is being removed as reference to the Office is sufficient information.

10 CFR Parts 1, 2, 4, 7, 9, 11, 15, 19, 20, 21, 25, 26, 30, 37, 40, 50, 51, 52, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 76, 81, 95, 100, 110, 140, 150, 170, and 171

Rename Office. This final rule removes all references to the office name “Office of Information Services” and replaces them with the new office name “Office of the Chief Information Officer.”

10 CFR Parts 1, 2, 7, 32, 40, 51, 61, 71, 72, 73, and 150

Capitalize The Words Tribe, Tribes, And Tribal. This final rule capitalizes all references of “Tribe,” “Tribes,” and “Tribal.” These changes are being made so that these terms are used consistently in the NRC’s regulations.

10 CFR Part 37

Correct Web site Address. In § 37.77(a)(1), this final rule removes the incorrect Web site address “<https://nrc.stp.ornl.gov/special/designee.pdf>” and replaces it with the correct Web site address “<https://scp.nrc.gov/special/designee.pdf>.”

10 CFR Part 50

Correct Misspelling. In § 50.34(f)(3)(v)(A)(1) and (B)(1), this final rule removes the misspelled term “subsubarticle” and replaces it with the correct term “subarticle.”

Remove Submission Requirement In section V, of appendix E, this final rule removes the requirement on nuclear power plant licensees to submit any changes to their emergency plans or procedures to the Commission, as specified in § 50.4, within 30 days. Changes to an emergency plan, however, must still be reported to the NRC or requested in a license amendment application as required in 10 CFR 50.54(q). With regard to changes to procedures that are required to be submitted under appendix E, section V only, and not under 10 CFR 50.54(q), the NRC has found that these changes consist of administrative information that is inconsequential to the NRC’s licensing or regulatory oversight activities (such as address changes and phone number changes). Even after the effective date of this rule, these changes to procedures will remain subject to NRC inspection. Thus, the change to appendix E, section V will reduce the regulatory burden on the licensee and the administrative burden on the NRC

staff without impacting the NRC’s oversight and inspection of nuclear power plant licensees. For these reasons, this rule reflects a non-substantive change of a duplicative requirement where notice-and-comment is unnecessary under the Administrative Procedure Act (5 U.S.C. 553(b)).

10 CFR Part 51

Correct Email Address. In § 51.123(a) and (b), this final rule removes the incorrect email address “distribution@nrc.gov” and replaces it with the correct email address “distribution.resource@nrc.gov.”

10 CFR Part 55

Correct Office Room Number. In Footnote 1 of § 55.40, this final rule removes the incorrect room number for the NRC Public Document “(O–1 F23)” and replaces it with the correct room number “(O–1 F21).”

10 CFR Part 71

Remove Federal Register Notice Requirement. In § 71.97(c)(3)(ii), this rule removes the requirement that changes to the list of governor’s designees and Tribal official’s designees of participating Tribes be published annually in the **Federal Register** on or about June 30th. This section will now direct stakeholders to the NRC’s public Web site where the most accurate information is available. This change also conforms this section to §§ 37.77(a)(1) and 73.37(b)(2).

10 CFR Part 73

Add Missing Information Collection References. In § 73.8, this final rule adds sections “73.23” and “73.51” to the list of sections in 10 CFR part 73 that contain information collections. These two sections were added to § 73.8 in a final rule dated July 6, 2012 (77 FR 39909), and were inadvertently removed in a final rule published on May 20, 2013 (78 FR 29550).

Correct Web site Address. In § 73.37(b)(2), this final rule removes the incorrect Web site address “<https://nrc.stp.ornl.gov/special/designee.pdf>” and replaces it with the correct Web site address “<https://scp.nrc.gov/special/designee.pdf>.”

III. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for

comment on the amendments, because notice and opportunity for comment are unnecessary. The amendments will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFRs related only to management, organization, procedure, and practice. Specifically, the revisions rename offices, capitalize words, correct a Web site address, correct a misspelling, remove a submission requirement, correct an email address, correct a room number, remove a **Federal Register** notice requirement, and add missing information collection references.

The Commission is exercising its authority under 5 U.S.C. 553(b)(3)(B) to publish these amendments as a final rule. The amendments are effective December 31, 2015. These amendments do not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(2), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act Statement

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995. The final rule, however, makes a non-substantive modification to an information collection, as the final rule eliminates a collection of information previously contained in 10 CFR part 50, appendix E, section V. The collection of information was approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the requesting document displays a currently valid Office of Management and Budget control number.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to

write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

VII. Backfitting and Issue Finality

The NRC has determined that the corrections in this final rule do not constitute backfitting and are not inconsistent with any of the issue finality provisions in 10 CFR part 52. The revisions are non-substantive in nature, including renaming offices, capitalizing words, correcting a Web site address, correcting a misspelling, removing a submission requirement, correcting an email address, correcting a room number, removing a **Federal Register** notice requirement, and adding missing information collection references. They impose no new requirements and make no substantive changes to the regulations. The corrections do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of the rule in final form would not constitute backfitting or represent an inconsistency with any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this correction rulemaking addressing backfitting or issue finality.

List of Subjects

10 CFR Part 1

Flags, Organization and functions (Government Agencies), Seals and insignia.

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 4

Administrative practice and procedure, Aged, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal aid programs, Federal buildings and facilities, Grant programs, Handicapped, Individuals with disabilities, Loan programs,

Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 7

Advisory committees, Sunshine Act.

10 CFR Part 9

Administrative practice and procedure, Courts, Criminal penalties, Freedom of information, Government employees, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 11

Hazardous materials transportation, Investigations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 15

Administrative practice and procedure, Claims, Debt collection.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear Energy, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Hazardous waste, Licensed material, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 26

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power plants and reactors, Privacy, Protection of information, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear energy, Nuclear materials, Penalties, Radiation protection, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 37

Byproduct material, Criminal penalties, Export, Hazardous materials transportation, Import, Licensed material, Nuclear materials, Penalties, Radioactive materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 40

Criminal penalties, Exports, Government contracts, Hazardous materials transportation, Hazardous waste, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Source material, Uranium, Whistleblowing.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Classified information, Criminal penalties, education, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, Hazardous waste, Indians, High-level waste, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Whistleblowing.

10 CFR Part 61

Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Low-level waste, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Waste treatment and disposal, Whistleblowing.

10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Hazardous waste, Intergovernmental relations, Low-level radioactive waste, Low-level radioactive waste treatment and disposal, Nuclear energy, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 63

Criminal penalties, Hazardous waste, High-level waste, Indians, Intergovernmental relations, Nuclear energy, Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Classified information, Criminal penalties, Emergency medical services, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material, Whistleblowing.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Incorporation by reference, Intergovernmental relations, Nuclear materials, Packaging and containers, Penalties, Radioactive materials, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Incorporation by reference, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium, Uranium enrichment by gaseous diffusion.

10 CFR Part 81

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements.

10 CFR Part 95

Classified information, Criminal penalties, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 100

Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Incorporation by reference, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 2, 4, 7, 9, 11, 15, 19, 20, 21, 25, 26, 30, 32, 37, 40, 50, 51, 52, 55, 60, 61, 62, 63, 70, 71, 72, 73, 74, 76, 81, 95, 100, 110, 140, 150, 170, and 171:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Atomic Energy Act of 1954, secs. 23, 25, 29, 161, 191 (42 U.S.C. 2033, 2035, 2039, 2201, 2241); Energy Reorganization Act of 1974, secs. 201, 203, 204, 205, 209 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); Administrative Procedure Act (5 U.S.C. 552, 553); Reorganization Plan No. 1 of 1980, 5 U.S.C. Appendix (Reorganization Plans).

§1.3 [Amended]

■ 2. In § 1.3, paragraph (c), remove the phrase “Information and Records Services Division, ”. Also in paragraph (c), remove the phrase “Office of Information Services” and add in its

place the phrase “Office of the Chief Information Officer”.

§ 1.32 [Amended]

■ 3. In § 1.32, paragraph (b), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

■ 4. In § 1.35:

■ a. Revise the section heading and the introductory text;

■ b. In paragraph (f), remove the word “and” at the end of paragraph;

■ c. In paragraph (g), remove the “,” at the end of paragraph and add in its place “;”;

■ d. Add new paragraphs (h) through (l).

The revision and additions read as follows:

§ 1.35 Office of the Chief Information Officer.

The Office of the Chief Information Officer—

* * * * *

(h) Plans, recommends, and oversees the NRC’s Information Technology (IT) Security Program consistent with applicable laws, regulations, management initiatives, and policies;

(i) Provides principal advice to the NRC on the infrastructure, as well as the programmatic and administrative aspects of cybersecurity;

(j) Establishes NRC-wide cybersecurity guidelines;

(k) Guides security process maturity, as well as formulating and overseeing the cybersecurity program budget; and

(l) Ensures NRC-wide integration, direction, and coordination of IT security planning and performance within the framework of the NRC IT Security Program.

§ 1.38 [Removed and Reserved]

■ 5. Remove and reserve § 1.38.

§ 1.42 [Amended]

■ 6. In § 1.42, paragraph (b)(3), remove the word “tribe” and add in its place the word “Tribal”.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 7. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 8. In part 2, wherever it may occur, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

■ 9. In part 2, wherever it may occur, remove the word “tribal” and add in its place the word “Tribal”.

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

■ 10. The authority citation for part 4 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 223, 234, 274 (42 U.S.C. 2201, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 401 (42 U.S.C. 5841, 5891); 29 U.S.C. 794; 42 U.S.C. 12101 *et seq.*; 44 U.S.C. 3504 note.

Subpart A also issued under 42 U.S.C. 2000d through d–7.

Subpart B also issued under 29 U.S.C. 706.

Subpart C also issued under 42 U.S.C. 6101 through 6107.

§ 4.5 [Amended]

■ 11. In § 4.5 remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 7—ADVISORY COMMITTEES

■ 12. The authority citation for part 7 continues to read as follows:

Authority: Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 5 U.S.C. Appendix (Federal Advisory Committee Act).

§ 7.2 [Amended]

■ 13. In § 7.2, the definition of Advisory Committee, in paragraph (10), remove the word “tribal” and add in its place the word “Tribal”.

§ 7.22 [Amended]

■ 14. In § 7.22, paragraph (b), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 9—PUBLIC RECORDS

■ 15. The authority citation for part 9 continues to read as follows:

Authority: Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

Subpart A also issued under 31 U.S.C. 9701.

Subpart B also issued under 5 U.S.C. 552a.

Subpart C also issued under 5 U.S.C. 552b.

■ 16. In part 9, wherever it may occur, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

■ 17. The authority citation for part 11 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 223 (42 U.S.C. 2201, 2273); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

Section 11.15(e) also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

§ 11.15 [Amended]

■ 18. In § 11.15, paragraph (a)(1), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 15—DEBT COLLECTION PROCEDURES

■ 19. The authority citation for part 15 continues to read as follows:

Authority: Atomic Energy Act of 1954, sec. 161, 186 (42 U.S.C. 2201, 2236); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 3701, 3713, 3716, 3719, 3720A; 42 U.S.C. 664; 44 U.S.C. 3504 note; 31 CFR parts 900 through 904; 31 CFR part 285; E.O. 12146, 44 FR 42657, 3 CFR, 1979 Comp., p. 409; E.O. 12988, 61 FR 4729, 3 CFR, 1996 Comp., p.157.

§ 15.3 [Amended]

■ 20. In § 15.3, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

■ 21. The authority citation for part 19 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 63, 81, 103, 104, 161, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 211, 401 (42 U.S.C. 5841, 5851, 5891); 44 U.S.C. 3504 note.

§ 19.17 [Amended]

■ 22. In § 19.17, paragraph (a), remove the phrase “Office of Information

Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

- 23. The authority citation for part 20 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 63, 65, 81, 103, 104, 161, 170H, 182, 186, 223, 234, 274, 1701 (42 U.S.C. 2014, 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2210h, 2232, 2236, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Low-Level Radioactive Waste Policy Amendments Act of 1985, sec. 2 (42 U.S.C. 2021b); 44 U.S.C. 3504 note.

- 24. In part 20, wherever it may occur, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

- 25. The authority citation for part 21 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 63, 81, 103, 104, 161, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

§ 21.5 [Amended]

- 26. In § 21.5, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 25—ACCESS AUTHORIZATION

- 27. The authority citation for part 25 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, 25 FR 1583, as amended, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., 9.298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

Section 25.17(f) and Appendix A also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

§ 25.9 [Amended]

- 28. In § 25.9, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 26—FITNESS FOR DUTY PROGRAMS

- 29. The authority citation for part 26 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 103, 104, 107, 161, 223, 234, 1701 (42 U.S.C. 2073, 2133, 2134, 2137, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 26.11 [Amended]

- 30. In § 26.11, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

- 31. The authority citation for part 30 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 81, 161, 181, 182, 183, 184, 186, 187, 223, 234, 274 (42 U.S.C. 2014, 2111, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

§ 30.6 [Amended]

- 32. In § 30.6, paragraph (a)(3), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

- 33. The authority citation for part 32 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 81, 161, 170H, 181, 182, 183, 223, 234, 274 (42 U.S.C. 2111, 2201, 2210h, 2231, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

§ 32.1 [Amended]

- 34. In § 32.1, paragraph (c)(1), remove the word “tribe” wherever it may occur, and add in its place the word “Tribe”.

PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

- 35. The authority citation for part 37 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 81, 103, 104, 147, 148, 149, 161, 182, 183, 223, 234, 274 (42 U.S.C. 2014, 2073, 2111, 2133, 2134, 2167, 2168, 2169, 2201, 2232, 2233, 2273, 2282, 2021); Energy

Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

- 36. In part 37, wherever it may occur, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

§ 37.77 [Amended]

- 37. In § 37.77(a)(1), remove the Web site address “<https://nrc.stp.ornl.gov/special/designee.pdf>” and add in its place the Web site address “<https://scp.nrc.gov/special/designee.pdf>”.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

- 38. The authority citation for part 40 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 62, 63, 64, 65, 69, 81, 83, 84, 122, 161, 181, 182, 183, 184, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2092, 2093, 2094, 2095, 2099, 2111, 2113, 2114, 2152, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Uranium Mill Tailings Radiation Control Act of 1978, sec. 104 (42 U.S.C. 7914); 44 U.S.C. 3504 note.

- 39. In part 40, wherever it may occur, remove the word “tribe” and add in its place the word “Tribe”.

§ 40.5 [Amended]

- 40. In § 40.5, paragraph (a)(3), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

- 41. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

§ 50.4 [Amended]

- 42. In § 50.4, paragraphs (a) and (e), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

§ 50.34 [Amended]

■ 43. In § 50.34(f)(3)(v)(A)(1) and (f)(3)(v)(B)(1), remove the word “Subsubarticle” wherever it may occur, and add in its place the word “subarticle”.

■ 44. In appendix E to part 50, revise section V. to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilizations Facilities.

* * * * *

V. Implementing Procedures

No less than 180 days before the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material, or the scheduled date for initial loading of fuel for a combined license under part 52 of this chapter, the applicant's or licensee's detailed implementing procedures for its emergency plan shall be submitted to the Commission as specified in § 50.4.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 45. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

■ 46. In part 51, wherever it may occur, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

■ 47. In part 51, wherever it may occur, remove the word “tribe” and add in its place the word “Tribe”.

■ 48. In part 51, wherever it may occur, remove the word “tribes” and add in its place the word “Tribes”.

§ 51.123 [Amended]

■ 49. In § 51.123, in paragraphs (a) and (b), remove the email address “DISTRIBUTION@nrc.gov” and add in its place the email address “distribution.resource@nrc.gov”.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 50. The authority citation for part 52 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235,

2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

§ 52.3 [Amended]

■ 51. In § 52.3, paragraph (a), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 55—OPERATORS’ LICENSES

■ 52. The authority citation for part 55 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 107, 161, 181, 182, 183, 186, 187, 223, 234 (42 U.S.C. 2137, 2201, 2231, 2232, 2233, 2236, 2237, 2273, 2282); Energy Reorganization Act secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); 44 U.S.C. 3504 note.

■ 53. In part 55, wherever it may occur, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

■ 54. In § 55.40, revise footnote 1 to read as follows:

§ 55.40 Implementation.

* * * * *

¹ Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Publishing Office, P.O. Box 38082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312. A copy is available for inspection and/or copying in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (O–1 F21), Rockville, MD.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

■ 55. The authority citation for part 60 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 223, 234 (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 42 U.S.C. 2021a; National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 114, 117, 121 (42 U.S.C. 10134, 10137, 10141); 44 U.S.C. 3504 note.

§ 60.4 [Amended]

■ 56. In § 60.4, paragraph (a), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 57. The authority citation for part 61 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 57, 62, 63, 65, 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 206, 211 (42 U.S.C. 5841, 5846, 5851); Low-Level Radioactive Waste Policy Amendments Act of 1985, sec. 2 (42 U.S.C. 2021b); 44 U.S.C. 3504 note.

■ 58. In part 61, wherever it may occur, remove the word “tribe” and add in its place the word “Tribe”.

■ 59. In part 61, wherever it may occur, remove the word “tribes” and add in its place the word “Tribes”.

■ 60. In part 61, wherever it may occur, remove the word “tribal” and add in its place the word “Tribal”.

§ 61.4 [Amended]

■ 61. In § 61.4, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

■ 62. The authority citation for part 62 continues to read as follows:

Authority: Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Low-Level Radioactive Waste Policy Act of 1985, secs. 2, 6 (42 U.S.C. 2021b, 2021f); 44 U.S.C. 3504 note.

§ 62.3 [Amended]

■ 63. In § 62.3, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

■ 64. The authority citation for part 63 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 223, 234 (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 42 U.S.C. 2021a; National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 114, 117, 121 (42 U.S.C. 10134, 10137, 10141); 44 U.S.C. 3504 note.

§ 63.4 [Amended]

■ 65. In § 63.4, paragraph (a)(3), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 66. The authority citation for part 70 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 184, 186, 187, 193, 223, 234, 274, 1701 (42 U.S.C. 2071, 2073, 2077(d), 2138, 2152, 2201, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

§ 70.5 [Amended]

■ 67. In § 70.5, paragraph (a)(3), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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

Authority: Atomic Energy Act of 1954, secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 180 (42 U.S.C. 10175); 44 U.S.C. 3504 note.

Section 71.97 also issued under Sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

§ 71.1 [Amended]

■ 69. In § 71.1, paragraph (a), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

§ 71.4 [Amended]

■ 70. In § 71.4, in the definition of Indian Tribe, remove the word “tribe” wherever it may occur, and add in its place the word “Tribe”.

■ 71. In § 71.97, revise paragraph (c)(3)(ii) to read as follows:

§ 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.

* * * * *

(c) * * *
(3) * * *

(ii) Contact information for each State, including telephone and mailing addresses of governors and governors’

designees, and participating Tribes, including telephone and mailing addresses of Tribal officials and Tribal official’s designees, is available on the NRC Web site at: <https://scp.nrc.gov/special/designee.pdf>.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 72. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 73. In part 72, wherever it may occur, remove the word “tribe” and add in its place the word “Tribe”.

§ 72.4 [Amended]

■ 74. In § 72.4, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 76. In part 73, wherever it may occur, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

§ 73.2 [Amended]

■ 77. In § 73.2, in the definition of Indian tribe, remove the word “tribe” and add in its place the word “Tribe”.

■ 78. In § 73.8, revise paragraph (b) to read as follows:

§ 73.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.20, 73.21, 73.23, 73.24, 73.25, 73.26, 73.27, 73.37, 73.38, 73.40, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and appendices B, C, and G to this part.

* * * * *

§ 73.37 [Amended]

■ 79. In § 73.37(b)(2) introductory text, remove the Web site address “<https://nrc-stp.ornl.gov/special/designee.pdf>” and add in its place the Web site address “<https://scp.nrc.gov/special/designee.pdf>”.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

■ 80. The authority citation for part 74 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 57, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2201, 2232, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 74.6 [Amended]

■ 81. In § 74.6, paragraph (c), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

■ 82. The authority citation for part 76 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 122, 161, 193(f), 223, 234, 1701 (42 U.S.C. 2152, 2201, 2243(f), 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 206, 211 (42 U.S.C. 5841, 5846, 5851); 44 U.S.C. 3504 note.

§ 76.5 [Amended]

■ 83. In § 76.5, paragraph (c), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

■ 84. The authority citation for part 81 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 156, 161 (42 U.S.C. 2186, 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

§ 81.3 [Amended]

■ 85. In § 81.3, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 86. The authority citation for part 95 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, as amended, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

§ 95.9 [Amended]

■ 87. In § 95.9, paragraph (c), remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 100—REACTOR SITE CRITERIA

■ 88. The authority citation for part 100 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 103, 104, 161, 182 (42 U.S.C. 2133, 2134, 2201, 2232); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 100.4 [Amended]

■ 89. In § 100.4, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 90. The authority citation for part 110 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124, 126, 127, 128, 129, 133, 134, 161, 170H, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2071, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160c, 216d, 2201, 2210h, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 *et seq.*

§ 110.4 [Amended]

■ 91. In § 110.4, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 92. The authority citation for part 140 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 140.5 [Amended]

■ 93. In § 140.5, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 94. The authority citation for part 150 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 81, 83, 84, 122, 161, 181, 223, 234, 274 (42 U.S.C. 2014, 2201, 2231, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

§ 150.4 [Amended]

■ 95. In § 150.4, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

§ 150.15a [Amended]

■ 96. In § 150.15a, paragraph (b)(6), remove the word “tribe” wherever it may occur, and add in its place the word “Tribe”.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 97. The authority citation for part 170 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w) (42 U.S.C. 2014, 2201(w)); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2214; 31 U.S.C. 901, 902, 9701; 44 U.S.C. 3504 note.

§ 170.5 [Amended]

■ 98. In § 170.5, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 99. The authority citation for part 171 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2214; 44 U.S.C. 3504 note.

§ 171.9 [Amended]

■ 100. In § 171.9, remove the phrase “Office of Information Services” and add in its place the phrase “Office of the Chief Information Officer”.

Dated at Rockville, Maryland, this 20th day of November, 2015.

For the Nuclear Regulatory Commission.

Helen Chang,

Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2015–30153 Filed 11–30–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2015–5806; Directorate Identifier 2015–SW–083–AD; Amendment 39–18331; AD 2015–22–53]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for Airbus Helicopters Model AS350B3 helicopters. This AD was sent previously to all known U.S. owners and operators of these helicopters and supersedes Emergency AD 2015–22–52, dated October 28, 2015. This AD requires revising the rotorcraft flight manual (RFM) to stop performing the yaw load compensator check during preflight procedures and instead perform it during post-flight procedures after rotor shut-down. This AD also requires the yaw servo hydraulic switch

to be in the "ON" position before taking off. This AD is prompted by two accidents and one incident of Airbus Helicopters Model AS350B3 helicopters. From preliminary investigations, loss of tail rotor (T/R) control during takeoff was evident in each event. These actions are intended to prevent takeoff without hydraulic pressure in the T/R hydraulic system, loss of T/R flight control, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective December 16, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2015-22-53, issued on October 30, 2015, which contains the requirements of this AD.

We must receive comments on this AD by February 1, 2016.

ADDRESSES: You may send comments by any of the following methods:

- **Federal eRulemaking Docket:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- **Fax:** 202-493-2251.
- **Mail:** Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- **Hand Delivery:** Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-5806; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <http://www.airbushelicopters.com/techpub>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT:

Stephen Barbini, Flight Test Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222-5110; email stephen.barbini@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, 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 them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On October 28, 2015 we issued Emergency AD 2015-22-52 for Airbus Helicopters Model AS350B3 helicopters with a dual hydraulic system that prohibited performing the yaw load compensator check (collective switch) during preflight procedures and instead required performing it during post-flight procedures. Emergency AD 2015-22-52 also required the yaw servo hydraulic switch (collective switch) to be in the "ON" (forward) position before taking off. Emergency AD 2015-22-52 was sent previously to all known U.S. owners and operators of these helicopters. The actions in Emergency AD 2015-22-52 were intended to prevent takeoff without hydraulic pressure in the T/R hydraulic system, loss of T/R flight control, and subsequent loss of control of the helicopter.

Emergency AD 2015-22-52 was prompted by two accidents and one incident of Airbus Helicopters Model AS350B3 helicopters with a dual hydraulic system installed. From preliminary investigations, loss of T/R

control during takeoff was evident in each event. Each event experienced a counterclockwise rotational yaw immediately after takeoff. It was also noted that the anti-torque pedals felt jammed or locked in the neutral position by the pilots in the two non-fatal events. The conditions in the events are indicative of takeoffs without hydraulic T/R assistance caused by a lack of pressure in the T/R hydraulic system. When taking off without T/R hydraulic assistance with the switch on the collective grip in the "OFF" (aft) position, the yaw load compensator remains discharged and degrades the T/R hydraulic system, which significantly increases the pilot T/R control load and prevents sufficient T/R thrust for takeoff.

Based on the accidents and incident, EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2015-0178, dated August 26, 2015, to correct an unsafe condition for Airbus Helicopters Model AS 350 B3 helicopters, equipped with a dual hydraulic system identified as modification OP 3082 or OP 3346. EASA advises of a perceived loss of T/R control that mimics jamming during take-off if the T/R hydraulic preflight checks are not performed in accordance with the checklist in the RFM. According to EASA, performing the T/R hydraulic preflight checks improperly may result in reduced function of the T/R hydraulic system, thereby significantly increasing the T/R control load for the pilot.

After we issued Emergency AD 2015-22-52, we received comments noting an error in terminology and a defect in reporting compliance that resulted in confusion in how to comply with Emergency AD 2015-22-52. Specifically, we referred to the collective switch for the yaw load compensator check, when we should have referred to the ACCU TST switch. Activating the collective switch after rotor shut-down will have no effect due to the absence of hydraulic pressure in the system. We also omitted a method of recording compliance. Therefore, on October 30, 2015, we issued Emergency AD 2015-22-53 to supersede Emergency AD 2015-22-52 to correct the error in terminology and the defect in recording compliance. Emergency AD 2015-22-53 requires revising the normal operating procedures section of the RFM to prohibit performing the yaw load compensator check (ACCU TST switch) during preflight procedures and instead require performing it during post-flight procedures after rotor shut-down. Emergency AD 2015-22-53 also requires revising the RFM to state that

the yaw servo hydraulic switch (collective switch) must be in the "ON" (forward) position before taking off. Emergency AD 2015–22–53 was also sent previously to all known U.S. owners and operators of these helicopters.

FAA's Determination

This helicopter has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design.

Related Service Information

Airbus Helicopters issued Service Bulletin No. AS350–67.00.66, Revision 1, dated October 22, 2015 (SB AS350–67.00.66), which specifies inserting specific pages of the bulletin into the RFM. These pages revise the preflight and post-flight hydraulic checks by moving the T/R yaw load compensator check from preflight to post-flight. These pages also revise terminology within the flight manuals for the different engine configurations.

Airbus Helicopters also issued Safety Information Notice No. 2944–S–29, Revision 0, dated August 26, 2015 (SIN 2944–S–29), which warns that attempting to take off without T/R hydraulic assistance (which may be caused by the yaw servo hydraulic switch on the collective grip in the "OFF" (aft) position) might be incorrectly perceived as T/R control failure (jam), which could lead to loss of control of the helicopter if not quickly identified and corrected. SIN 2944–S–29 also advises of the RFM update that revises the run-up hydraulic check starting procedures to no longer specify "pressing" the yaw servo hydraulic switch. To mitigate this potential error, the yaw load compensator check has been moved from preflight to post-flight procedures. Further, SIN 2944–S–29 states the yaw servo hydraulic switch, which is located on the collective grip, is also called the hydraulic pressure switch or hydraulic cut off switch in various RFMs.

AD Requirements

This AD requires, before further flight, revising the RFM to stop performing the yaw load compensator check (ACCU TST switch) during preflight procedures and instead perform the yaw load

compensator check during post-flight procedures after rotor shut-down. This AD also requires revising the RFM to state that the yaw servo hydraulic switch (collective switch) must be in the "ON" (forward) position before taking off.

Differences Between This AD and the EASA AD

The EASA AD requires revising the RFM by incorporating procedures contained in Airbus Helicopters Service Bulletin No. AS350–67.00.66, Revision 0, dated August 26, 2015, and informing all flight crew of the RFM changes. This AD requires revising the RFM by inserting a copy of this AD or by making pen and ink changes.

Interim Action

We consider this AD to be an interim action. The design approval holder is currently developing a terminating action that will address the unsafe condition identified in this AD. Once this terminating action is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this AD affects 427 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD at an average labor rate of \$85 per work-hour. It takes about 0.5 work-hour to revise an RFM for a cost of \$43 per helicopter and \$18,361 for the U.S. fleet.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we found and continue to find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the previously described unsafe condition can adversely affect the controllability of the helicopter and the initial required action must be accomplished before further flight.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment before issuing this AD were impracticable and contrary to public interest and good cause existed to make the AD effective immediately by Emergency AD 2015–22–53, issued on October 30, 2015, to all known U.S. owners and operators of these helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to

section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–22–53 Airbus Helicopters:

Amendment 39–18331; Docket No. FAA–2015–5806; Directorate Identifier 2015–SW–083–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS350B3 helicopters with a dual hydraulic system installed, certificated in any category.

Note 1 to paragraph (a) of this AD: The dual hydraulic system for Model AS350B3 helicopters is referred to as Airbus modification OP 3082 or OP 3346.

(b) Unsafe Condition

This AD defines the unsafe condition as lack of hydraulic pressure in a tail rotor (T/R) hydraulic system. This condition could result in loss of T/R flight control and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes Emergency AD 2015–22–52, Directorate Identifier 2015–SW–074–AD, dated October 28, 2015.

(d) Effective Date

This AD becomes effective December 16, 2015 to all persons except those persons to whom it was made immediately effective by Emergency AD 2015–22–53, issued on October 30, 2015, which contains the requirements of this AD.

(e) Compliance

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

(f) Required Actions

Before further flight, insert a copy of this AD into the rotorcraft flight manual, Section 4 Normal Operating Procedures, or make pen and ink changes to the preflight and post-flight procedures as follows:

(1) Stop performing the yaw load compensator check (ACCU TST switch) during preflight procedures, and instead perform the yaw load compensator check during post-flight procedures after rotor shutdown.

(2) The yaw servo hydraulic switch (collective switch) must be in the “ON” (forward) position before takeoff.

Note 2 to paragraph (f)(2) of this AD: The yaw servo hydraulic switch is also called the hydraulic pressure switch or hydraulic cut off switch in various Airbus Helicopters rotorcraft flight manuals.

(g) Special Flight Permits

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Stephen Barbini, Flight Test Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email 9-ASW-FTW-AMOC-Requests@faa.gov.

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

(i) Additional Information

(1) Airbus Helicopters Service Bulletin No. AS350–67.00.66, Revision 1, dated October 22, 2015, and Airbus Helicopters Safety Information Notice No. 2944–S–29, Revision 0, dated August 26, 2015, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at <http://www.airbushelicopters.com/techpub>. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0178, dated August 26, 2015. You may view the EASA AD on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA–2015–5806.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 2910, Main Hydraulic System.

Issued in Fort Worth, Texas, on November 13, 2015.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–30274 Filed 11–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Notice of Delay of Discharge Requirements for U.S. Coast Guard Activities in Greater Farallones and Cordell Bank National Marine Sanctuaries

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean

Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; delay of effectiveness for discharge requirements with regard to Coast Guard activities.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) expanded the boundaries of Gulf of the Farallones National Marine Sanctuary (now renamed Greater Farallones National Marine Sanctuary or GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their previous boundaries with a final rule published on March 12, 2015. The Final Rule entered into effect on June 9, 2015. At that time, NOAA postponed the effectiveness of the discharge requirements in both sanctuaries' regulations with regard to U.S. Coast Guard activities for 6 months. This document extends the postponement of the discharge requirements for these activities for another 6 months to provide adequate time for completion of an environmental assessment, and subsequent rulemaking, as appropriate.

DATES: The effectiveness for the discharge requirements in both CBNMS and GFNMS expansion areas with regard to U.S. Coast Guard activities is June 9, 2016.

ADDRESSES: Copies of the FEIS, final management plans, and the final rule published on March 12, 2015 can be viewed or downloaded at http://farallones.noaa.gov/manage/expansion_cbgf.html.

FOR FURTHER INFORMATION CONTACT:

Maria Brown, Greater Farallones National Marine Sanctuary Superintendent, at Maria.Brown@noaa.gov or 415–561–6622; or Dan Howard, Cordell Bank National Marine Sanctuary Superintendent, at Dan.Howard@noaa.gov or 415–464–5260.

SUPPLEMENTARY INFORMATION: On March 12, 2015, NOAA expanded the boundaries of Gulf of the Farallones National Marine Sanctuary (now renamed Greater Farallones National Marine Sanctuary or GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their previous boundaries with a final rule (80 FR 13078). The Final Rule entered into effect on June 9, 2015 (80 FR 34047). At that time, NOAA postponed the effectiveness of the discharge requirements in both sanctuaries' regulations with regard to U.S. Coast Guard (USCG) activities for 6 months.

This document postpones the effectiveness of the discharge requirements in both sanctuaries with regard to USCG activities for another 6 months, until June 9, 2016. In the course of the rule making to expand GFNMS and CBNMS, NOAA learned from USCG that the discharge regulations had the potential to impair the operations of USCG vessels and air craft conducting law enforcement and on-water training exercises in GFNMS and CBNMS. The USCG supports national marine sanctuary management by providing routine surveillance and dedicated law enforcement of the National Marine Sanctuaries Act and sanctuary regulations.

To ensure that the March 12, 2015 rule does not undermine USCG's ability to perform its duties, NOAA postponed for 6 months the effectiveness of the discharge requirements for USCG operations. Specifically, the effectiveness of the discharge requirements was postponed until December 9, 2015. However, NOAA needs more time to assess USCG activities and develop alternatives for an environmental assessment developed pursuant to the requirements of the National Environmental Policy Act. Therefore, NOAA is postponing the effectiveness of the discharge requirements with respect to USCG operations for another 6 months, until June 9, 2016. During this time, NOAA will consider how to address USCG's concerns and will consider, among other things, whether to exempt certain USCG activities in sanctuary regulations. The public, other federal agencies, and interested stakeholders will be given an opportunity to comment on various alternatives that are being considered. This will include the opportunity to review any proposed rule and related environmental analysis.

Authority: 16 U.S.C. 1431 *et seq.*; 16 U.S.C. 470.

Dated: November 20, 2015.

John Armor,

Acting Director for the Office of National Marine Sanctuaries.

[FR Doc. 2015-30434 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-NK-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2016. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

DATES: Effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT:

Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV. Guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with subpart B of part 4044. In addition, when PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits.

Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II-A, II-B, and II-C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I-15 with Table I-16 in order to provide an updated correlation, appropriate for calendar year 2016, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I-16 will be used to value benefits in plans with valuation dates during calendar year 2016.

PBGC has determined that notice of, and public comment on, this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2016, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2016.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility

Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. Appendix D to part 4044 is amended by removing Table I–15 and adding in its place Table I–16 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–16—SELECTION OF RETIREMENT RATE CATEGORY
[For plans with valuation dates after December 31, 2015, and before January 1, 2017]

If participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low ¹ if monthly benefit at URA is less than—	Medium ² if monthly benefit at URA is—		High ³ if monthly benefit at URA is greater than—
		From—	To—	
2017	627	627	2,647	2,647
2018	640	640	2,705	2,705
2019	655	655	2,767	2,767
2020	670	670	2,831	2,831
2021	686	686	2,896	2,896
2022	701	701	2,962	2,962
2023	718	718	3,030	3,030
2024	734	734	3,100	3,100
2025	751	751	3,171	3,171
2026 or later	768	768	3,244	3,244

¹ Table II–A.

² Table II–B.

³ Table II–C.

* * * * *

Issued in Washington, DC, this day of November 17, 2015.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2015–30221 Filed 11–30–15; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[USA–2015–HQ–0036]

RIN 0702–AA71

Army Privacy Program

AGENCY: Department of the Army, DoD.

ACTION: Direct final rule.

SUMMARY: The Department of the Army is amending the Army Privacy Program Regulation. Specifically, this direct final rule is removing the exemption for A0601–222 USMEPCOM, titled Armed Services Military Accession Testing. Based on a recent review of A0601–222 Armed Services Military Accession Testing it has been determined that records in this system will now be covered by DMDC 15 DoD, Armed Services Military Accession Testing, which published in the **Federal Register** on February 11, 2015. This rule is being

published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule will be effective on February 4, 2016 unless comments are received that would result in a contrary determination. Comments will be accepted on or before February 1, 2016.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

- **Federal Rulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Chief, FOIA/PA, telephone: 703–428–6513.

SUPPLEMENTARY INFORMATION: The revisions to this rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563 completed in August 2011. DoD's full plan can be accessed at: <http://www.regulations.gov#!docketDetail;D=DOD-2011-OS-0036>.

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Summary

This rule provides policy and procedures for Army's implementation of the Privacy Act of 1974, as amended. The Army is removing an exemption rule from the exemptions section. This regulatory action imposes no monetary costs to the Agency or public.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

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

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that this rule does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act within the Department of Defense.

Public Law 95-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this rule imposes no information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly 32 CFR part 505 is amended as follows:

PART 505—ARMY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93-579, Stat. 1896 (5 U.S.C. 552a).

Appendix D to Part 505 [Amended]

■ 2. Amend appendix D to part 505 by:

- a. Removing paragraph (g)(32).
- b. Redesignating paragraphs (g)(33) through (35) as paragraphs (g)(32) through (34).

Tracy Rogers,

Chief, Privacy and FOIA Office.

[FR Doc. 2015-30454 Filed 11-30-15; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-LACH-19666; PPPWNOCAM3 PPMOMFO1Z.F00000]

RIN 1024-AE09

Special Regulations, Areas of the National Park System, Lake Chelan National Recreation Area, Solid Waste Disposal

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is authorizing a solid waste transfer station near Stehekin, Washington, within the boundary of Lake Chelan National Recreation Area, that does not meet all the siting criteria of the general National Park Service regulations and accepts solid waste generated within the boundary of the recreation area from non-National Park Service activities.

DATES: This rule is effective December 31, 2015.

FOR FURTHER INFORMATION CONTACT:

Kerri L. Cook, Facility Operations Specialist, National Park Service, North Cascades National Park Complex, 810 State Route 20, Sedro-Woolley, WA 98284; (360) 854-7280. Email: Kerri_Cook@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1994, the National Park Service (NPS) adopted regulations

codified at 36 CFR part 6 to implement a statutory requirement of Public Law 98-506 (54 U.S.C. 100903) (Act), which was enacted in 1984. The Act prohibits the operation of a solid waste disposal site within the boundary of any unit of the National Park System except for those operating as of September 1, 1984, or those "used only for disposal of wastes generated within that unit of the park system so long as such site will not degrade any of the natural or cultural resources of such park unit." The Act directed the Secretary of the Interior to promulgate regulations "to carry out the provisions of this subsection, including reasonable regulations to mitigate the adverse effects of solid waste disposal sites in operation as of September 1, 1984, upon property of the United States."

The general regulations at 36 CFR part 6 ordinarily control both existing and new solid waste disposal sites within the boundaries of any unit of the National Park System to ensure that operation of such sites will not degrade the natural or cultural resources of the park unit. Transfer stations are included in the definition of "solid waste disposal site" in § 6.3 and are therefore subject to 36 CFR part 6.

Section 6.4(a) prohibits any person (including NPS) from operating a new solid waste disposal site within the boundaries of a park unit unless the criteria in § 6.4(a) are met. Section 6.4(a)(1) requires that the solid waste handled by the site is generated solely from "National Park Service activities," defined in § 6.3 as "operations conducted by the National Park Service or a National Park Service contractor, concessionaire or commercial use licensee." Section 6.4(a)(9) requires that "the site is not located within one mile of a National Park Service visitor center, campground, ranger station, entrance station, or similar public use facility, or a residential area." Section 6.4(a)(10) requires that the site is not detectable by public sight, sound, or odor from a scenic vista, a public use facility, a designated or proposed wilderness area, a site listed on (or eligible for listing on) the National Register of Historic Places, or a public road. Section 6.8(a) prohibits the NPS from accepting waste at an NPS operated solid waste disposal site, except for waste generated by NPS activities.

Final Rule

The NPS is promulgating a park-specific regulation in 36 CFR 7.62 to authorize a limited exception to the general regulations described above. The rule authorizes an NPS transfer station on federal lands near Stehekin,

Washington, within the boundary of Lake Chelan National Recreation Area (LACH or park), that does not satisfy all of the siting requirements in part 6 and that accepts non-NPS waste generated by the Stehekin community. The need for this regulation is explained below.

Stehekin is a remote community of approximately 75 year-round, plus 80 seasonal, residents located on privately owned land within the statutory boundary of LACH. Stehekin is located at the head of 55-mile-long Lake Chelan and is accessible only by boat, float plane, or foot trail. Non-NPS services and facilities in Stehekin include seasonal lodging, food operations, and other small businesses that help support 35,000–45,000 park visitors annually. The NPS operates the only facility in the Stehekin Valley for the management of solid waste. Waste consolidated at the NPS transfer station is shipped by barge 55 miles down the lake for ultimate disposal. The geographically isolated private residents and businesses in Stehekin have no feasible method of properly disposing solid waste other than at the NPS transfer station. Consequently, the NPS has for many years accepted Stehekin community waste in its transfer station to deter small dumps on private lands and illegal dumping on public lands. Although the Act does not prohibit the NPS from receiving Stehekin waste, this waste does not qualify as waste generated from “National Park Service activities” under the existing regulations, so the current practice of accepting waste from Stehekin at the existing NPS transfer station conflicts with 36 CFR 6.8(a).

The existing NPS transfer station is located within the 100-year floodplain and is part of a larger maintenance facility that is being relocated outside of the Stehekin River floodplain due to frequent flooding.¹ The NPS seeks to build a new transfer station at the site of the new maintenance facility in a more environmentally suitable location within LACH and outside the 100-year floodplain. The NPS has determined that there is no available or suitable nonfederal land, and a limited amount of buildable federal land, outside the floodplain in the lower Stehekin River

valley.² The NPS has also determined that, due to geographic constraints, there are no suitable locations for the new transfer station that comply with the site location requirements in § 6.4(a)(9) and (10). Specifically, like the existing maintenance facility and transfer station, the proposed site of the new transfer station: (i) Is located within one mile of a campground (Harlequin Campground) and residential housing; (ii) will likely be visible from scenic vistas and off-trail areas in designated wilderness areas; (iii) may be heard from a campground (Harlequin Campground); and (iv) may be detectable by sight, sound, or odor from a road open to public travel.

The NPS has determined that in these unique circumstances, it will best protect park resources to allow the NPS transfer station, whether at the existing or proposed location, to accept waste generated by the community of Stehekin, notwithstanding the prohibition on accepting non-NPS waste in §§ 6.4(a)(1) and 6.8(a) and the siting criteria in § 6.4(a)(9) and (10). Due to its geographic isolation, the community of Stehekin has no environmentally responsible or practicable alternative for the disposal of its waste, much of which is generated by the provision of essential services to thousands of park visitors each year. Prohibiting this community from using the existing or proposed NPS transfer station could result in the illegal disposal of waste on park lands, or other disposal practices which would degrade the natural resources of LACH. In this exceptional situation, accepting non-NPS-generated waste for transfer and ultimate disposal outside the park boundary will pose significantly fewer environmental land use concerns than other alternatives. This determination is supported by the analysis contained in the November 2014 Replacement of Administrative Facilities at Stehekin Environmental Assessment (EA) and the August 2015 Finding of No Significant Impact (FONSI), which examine the environmental impacts of the continued operation of the existing NPS transfer station and the construction and operation of the new transfer station, which will employ contemporary environmental methods for handling waste.

The NPS promulgates a special regulation to authorize an exception to a prohibition found in a general regulation only in limited circumstances. The only other exceptions to the part 6 requirements have been granted by special regulation for Alaskan parks under similar circumstances, where geographically isolated communities have no feasible alternative for solid waste disposal that complies with the part 6 requirements. The rule accommodates the circumstances of the Stehekin community which is located in a remote area within the boundary of LACH and has no other practicable options for environmentally responsible solid-waste disposal. It is designed only to authorize the operation of the existing transfer station and the proposed transfer station at the locations identified in the EA, which the NPS believes will best protect park resources based upon the analysis contained in the EA. All other requirements in part 6 will remain in effect and apply to the existing and new NPS transfer station, including the requirement in § 6.4(a)(3) that the site of the existing and new facility “will not degrade any of the natural or cultural resources” of LACH. The rule is consistent with the Act, which does not prohibit new solid waste disposal sites from handling waste generated by non-NPS activities within a park unit provided that the site will not degrade any of the park unit’s natural or cultural resources. The rule does not supersede or replace other requirements applicable to solid waste disposal sites, including the policy (unless there is an approved waiver) in Director’s Order #35B (Sale of National Park Service Produced Utilities) that NPS recover the cost of utilities (including the collection and disposal of solid waste) provided to non-NPS users.

Under these circumstances, the NPS has determined that the exceptions to part 6 in the rule are appropriate and the sites will not degrade the park’s natural or cultural resources.

Summary of Public Comments

The NPS published the proposed rule at 80 FR 39985 (July 13, 2015). The NPS accepted comments through the mail, hand delivery, and the Federal eRulemaking Portal at <http://www.regulations.gov>. Comments were accepted through October 13, 2015. The NPS also held public workshops to discuss the proposed rule on October 7 in Wenatchee and on October 8 in Stehekin. The NPS did not receive any comments on the proposed rule. The NPS has not made any changes to the proposed rule.

¹ For more information about flooding in the Stehekin River Channel Migration Zone and plans to move the existing maintenance facility, see the Stehekin River Corridor Implementation Plan and Final Environmental Impact Statement (FEIS) which can be viewed at the park’s planning Web site, <http://www.nps.gov/noca/parkngmt/planning.htm>, then click on the link entitled “Stehekin River Corridor Implementation Plan/Environmental Impact Statement (2012).”

² See the Replacement of Administrative Facilities at Stehekin Environmental Assessment that tiers off the 2012 FEIS and specifically evaluates what facilities would be constructed and precisely where they would be located. This document can be viewed at <http://parkplanning.nps.gov/SMFRP> by clicking on “Document List.”

Compliance With Other Laws, Executive Orders, and Departmental Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. It emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the benefit-cost and regulatory flexibility analyses found in the report entitled "Benefit-Cost and Regulatory Flexibility Analyses: Solid Waste Management at Lake Chelan National Recreation Area" which can be viewed online at <http://parkplanning.nps.gov/SMFRP> by clicking the link entitled "Document List."

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Department policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

In May and July 2014, the NPS sent letters to the Tribal Historic Preservation Officers for the Colville Confederated Tribes and the Confederated Tribes and Bands of the Yakama Nation inviting comment regarding the inventory, evaluation, and finding of no effect on cultural resources

within the project area. This encompasses the relocation of all maintenance facilities, including the transfer station, as proposed in the preferred alternative (Alternative 2) in the EA. These tribes did not identify any concerns related to the project.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We 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.

National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because we reached a Finding of No Significant Impact. This rule implements part of the preferred alternative (Alternative 2) in the EA, which is the selected alternative in the FONSI. The EA and FONSI are referenced above and available online at <http://parkplanning.nps.gov/SMFRP> by clicking on "Document List."

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Drafting Information

The primary author of this regulation is Jay Calhoun, Regulations Program Specialist, Division of Regulations, Jurisdiction, and Special Park Uses, National Park Service, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

- 1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10–137 and D.C. Code 50–2201.07.

- 2. In § 7.62, add paragraph (d) to read as follows:

\$7.62 Lake Chelan National Recreation Area.

* * * * *

(d) *Solid waste disposal.* A solid waste transfer station located near Stehekin within the boundary of Lake Chelan National Recreation Area must comply with all provisions in 36 CFR part 6, except it may:

(1) Accept solid waste generated within the boundary of the park unit that was not generated by National Park Service activities;

(2) Be located within one mile of a campground or a residential area;

(3) Be visible by the public from scenic vistas or off-trail areas in designated wilderness areas;

(4) Be detectable by the public by sound from a campground; and

(5) Be detectable by the public by sight, sound, or odor from a road open to public travel.

Dated: November 19, 2015.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015-30349 Filed 11-30-15; 8:45 am]

BILLING CODE 4310-EJ-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AP60

Expanded Access to Non-VA Care Through the Veterans Choice Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) revises its medical regulations that implement section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (hereafter referred to as “the Choice Act”), which requires VA to establish a program to furnish hospital care and medical services through eligible non-VA health care providers to eligible veterans who either cannot be seen within the wait-time goals of the Veterans Health Administration (VHA) or who qualify based on their place of residence (hereafter referred to as the “Veterans Choice Program” or the “Program”). These regulatory revisions are required by the most recent amendments to the Choice Act made by the Construction Authorization and Choice Improvement Act of 2014, and by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. The Construction Authorization and Choice Improvement Act of 2014

amended the Choice Act to define additional criteria that VA may use to determine that a veteran’s travel to a VA medical facility is an “unusual or excessive burden,” and the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 amended the Choice Act to cover all veterans enrolled in the VA health care system, remove the 60-day limit on an episode of care, modify the wait-time and 40-mile distance eligibility criteria, and expand provider eligibility based on criteria as determined by VA. This interim final rule revises VA regulations consistent with the changes made to the Choice Act as described above.

DATES: *Effective date:* This rule is effective on December 1, 2015.

Comment date: Comments must be received on or before March 30, 2016.

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Director, Business Policy, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382-2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Veterans Access, Choice, and Accountability Act of 2014 (the Choice Act, Pub. L. 113-146, 128 Stat. 1754) was enacted on August 7, 2014. Further amendments to the Choice Act were made on September 26, 2014, by the Department of Veterans Affairs Expiring Authorities Act of 2014 (Pub. L. 113-175, 128 Stat. 1901, 1906); on December 16, 2014, by the Consolidated and Further Continuing Appropriations Act of 2015 (Pub. L. 113-235, 128 Stat. 2130, 2568); on May 22, 2015, by the Construction Authorization and Choice Improvement Act (Pub. L. 114-19, 129 Stat. 215); and on July 31, 2015, by the Surface Transportation and Veterans Health Care Choice Improvement Act (Pub. L. 114-41, 129 Stat. 443). This interim final rule revises VA regulations that implement the Choice Act in accordance with the most recent amendments made by Public Laws 114-19 and 114-41. Prior to discussing the regulatory changes made in this interim final rule, a brief history of previous rulemakings that created and revised regulations that implement the Choice Act is provided below.

Section 101 of the Choice Act creates the Veterans Choice Program (the Program) and requires VA to enter into agreements with identified eligible non-Department of Veterans Affairs (VA) entities or providers to furnish hospital care and medical services to eligible veterans who elect to receive care under the Program. Sec. 101(a)(1)(A), Public

Law 113-146, 128 Stat. 1754. On November 5, 2014, VA published an interim final rule, as required by section 101(n) of the Choice Act, to implement the Veterans Choice Program through new regulations at 38 CFR 17.1500-17.1540. 79 FR 65571 (hereafter referred to as the “November interim final rule”). VA published another interim final rule on April 24, 2015, modifying § 17.1510(e) to revise the methodology for calculating distances under that section from geodesic (or “straight-line”) distance to driving distance. 80 FR 22906 (hereafter referred to as the “April interim final rule”). VA published a final rule (hereafter referred to as the “final rule”) amending the payment rates in the Program to account for two exceptions: One for Alaska, and one for states with an All-Payer Model Agreement (Maryland). These two payment rate exceptions were authorized by section 242 of Division I of Public Law 113-235. 128 Stat. 2568.

Changes in Public Law 114-19 Related to the “Unusual or Excessive Burden” Standard

Under the November interim final rule at § 17.1510(b)(4)(ii), veterans may be eligible to participate in the Veterans Choice Program if they live 40 miles or less from a VA medical facility but face an “unusual or excessive burden” in traveling to such medical facility based on the presence of a body of water or a geologic formation that cannot be crossed by road. As explained in the November interim final rule, this standard for “unusual or excessive burden” was VA’s interpretation of the language in the Choice Act, which at that time required the burden to be “due to geographical challenges, as determined by the Secretary.” Sec. 101(b)(2)(D)(ii)(II), Pub. L. 113-146, 128 Stat. 1754. As explained in the final rule, section 3(a)(2) of Public Law 114-19 amended section 101(b)(2)(D)(ii)(II) of the Choice Act by defining additional criteria that could be the basis for finding that a veteran faced an “unusual or excessive burden” in traveling to receive care in a VA medical facility, including environmental factors such as roads that are not accessible to the general public, traffic, or hazardous weather; a medical condition that affects the ability to travel; or other factors, as determined by the Secretary. VA implemented two of these factors, namely the environmental factors such as roads that are not accessible to the general public, traffic, or hazardous weather, or a medical condition that affects the ability to travel, ahead of these regulatory revisions. We did so because we believe these factors are

easily understood by the public and that implementation fulfilled a clear Congressional mandate that had an immediate effective date. These changes were not subject to notice and comment prior to implementation because they had an immediate effective date and VA did not need to interpret the language to give it effect. VA is now adding these criteria to § 17.1510(b)(4)(ii) and is merely restating the existing statutory law to make our regulations consistent with Congressional intent as well as consistent with our current practice. These new criteria in § 17.1510(b)(4)(ii) are a virtually verbatim copy from section 3(a)(2) of Public Law 114–19 without the addition of further clarifying criteria, although we provide some examples here for clarity. For instance, roads that are not accessible to the general public include roads through military bases or other restricted areas. If veterans are only able to access a VA medical facility that is 40 miles or less from their residence via such a restricted road, they can be considered eligible for the Program under this standard. Traffic or hazardous weather includes special traffic congestion and patterns or weather conditions that make travel of a veteran to a VA medical facility 40 miles or less from their residence excessively or unusually burdensome. A medical condition that affects the ability to travel includes a medical condition of the veteran that affects the ability of the veteran to safely travel for 40 miles or less to a VA medical facility or that otherwise makes such travel burdensome. As an example, veterans on portable ventilators or with oxygen tanks may only be able to travel for a certain amount of time before their health is in jeopardy. As another example, veterans with spinal cord injuries or other serious conditions may require the use of assistive devices or may not be able to traverse over bumpier or windier roads, and may also face an unusual or excessive burden in traveling to a VA medical facility that is 40 miles or less from their residence. If traveling to a non-VA facility would be safer for such veterans than traveling to the nearest VA medical facility, they can qualify for the Program under this standard because traveling to the VA medical facility would be unusually or excessively burdensome. These are intended to be clarifying but not exhaustive examples of medical conditions that may qualify veterans to receive care at non-VA facilities under the new medical condition criterion in § 17.1510(b)(4)(ii). VA currently makes determinations regarding eligibility

under the “unusual or excessive burden” criterion in § 17.1510(b)(4)(ii) based on the facts presented by the particular veteran’s circumstances, and will continue to do so under the new criteria in § 17.1510(b)(4)(ii). Such determinations do not need to be made in person and can instead be made based on information that is available in the veteran’s medical record or that is otherwise available to VA.

In addition to the express factors in section 3(a)(2) of Public Law 114–19 that are related to the environment or that are related to the medical condition of a veteran, we add three “other factors” to § 17.1510(b)(4)(ii)(A) through (C) that the Secretary may consider when determining whether a veteran faces an unusual or excessive burden in travelling to a VA medical facility that is 40 miles or less from their residence. These criteria are newly implemented in this interim final rule and are not intended to be an exhaustive list, although VA anticipates they will address the majority of cases that could reasonably be the basis for finding an unusual or excessive burden in travel. These other factors are the nature or simplicity of the hospital care or medical services the veteran requires, how frequently the veteran needs hospital care or medical services, and the need for an attendant, which is defined as a person who provides required aid and/or physical assistance to the veteran, for a veteran to travel to a VA medical facility for hospital care or medical services. Considering the nature or simplicity of the care or services will allow VA to determine, for example, that routine and simple procedures that do not necessarily require the expertise or best practices of VA providers (such as simple tests or treatments like an allergy test or an immunization) do not justify traveling a longer distance just to receive that care from VA. Similarly, if a veteran needs repeated appointments for a course of treatment, such as chemotherapy, the frequency of travel could become an excessive burden on the veteran that could be alleviated or lessened by receiving care closer to home. If a veteran requires an attendant to travel to a VA medical facility, this could also create an excessive or unusual burden on the veteran, as he or she may need to arrange transportation with another person. VA will define the term “attendant” to include any person who provides required aid and/or physical assistance to the veteran to travel to a VA medical facility for hospital care or medical services. This definition is consistent with the definition of this

term in VA’s beneficiary travel regulation (see 38 CFR 70.2.), but the definition at § 70.2 is dependent on separate eligibility under the beneficiary travel program, and therefore is not cross referenced in § 17.1510(b)(4)(ii)(C). The list of factors in § 17.1510(b)(4)(ii)(A) through (C) is demonstrative and not exhaustive. There may be other unique factors that create an unusual or excessive burden for a veteran, and in such cases, VA will make a determination on a case-by-case basis.

Changes Made by Public Law 114–41 Related to Veteran Eligibility, Periods of Follow Up Care, Wait Times, Distance Requirements, and Provider Eligibility

Section 4005 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 amended section 101 of the Choice Act to: Remove the August 1, 2014 enrollment date restriction, thereby making all veterans enrolled in the VA health care system under § 17.36 eligible for the Program if they meet its other eligibility criteria; remove the 60-day limit on an episode of care; modify wait-time eligibility requirements; modify the 40-mile distance eligibility criterion; and expand provider eligibility based on criteria as determined by VA. Sec. 4005, Public Law 114–41, 129 Stat. 443. Paragraph (a) of § 17.1510 is therefore revised, and paragraphs (a)(1) and (2) are removed, so it is clear under revised § 17.1510(a) that all veterans enrolled under § 17.36 are potentially eligible, as required by subsection (b) of section 4005 of Public Law 114–41. VA has already implemented these changes related to removal of the August 1, 2014 enrollment date ahead of the regulatory revisions in this interim final rule. These changes were not subject to notice and comment prior to implementation because they had an immediate effective date and VA did not need to interpret the language to give it effect. These changes are merely a restatement of existing statutory law to make our regulations consistent with Congressional intent as well as consistent with our current practice. VA enrolls new veterans every day, so these changes have allowed more veterans who also meet the other eligibility requirements under § 17.1510 to be eligible for the Program.

We discuss below the remaining changes made by Public Law 114–41 to section 101 of the Choice Act that are newly implemented in this interim final rule. Section 4005(a) of Public Law 114–41 amended section 101(h) of the Choice Act by removing the 60-day

limitation on an “episode of care.” Sec. 4005(a), Public Law 114–41, 129 Stat. 443. The definition of “episode of care” in § 17.1505 is therefore revised by removing the phrase “which lasts no longer than 60 days from the date of the first appointment with a non-VA health care provider.” We replace the 60-day limitation with a 1-year limitation, consistent with VA’s authority in section 101(c)(1)(B)(i) of the Choice Act to establish a timeframe for authorization of care. This change creates a broader standard in terms of the possible duration of an episode of care, but the definition of “episode of care” in § 17.1505 still means a “necessary course of treatment, including follow-up appointments and ancillary and specialty services” for identified health care needs. VA therefore retains clinical judgment in this revised definition to determine whether ancillary and specialty care of any duration up to 1 year is actually needed in the course of a veteran’s treatment. We reiterate from the November interim final rule that while some episodes of care require only a single visit, others may require multiple visits, but in all cases VA will authorize only the care that it deems necessary as part of a course of treatment. If a non-VA health care provider believes that a veteran needs additional care outside the scope of the authorized course of treatment, the health care provider must contact VA prior to administering such care to ensure that this care is authorized and therefore will be paid for by VA. Whether additional care constitutes a new “episode of care” will continue to be a clinical determination made by VA on a case-by-case basis. VA anticipates that the vendors that administer the Choice Program will require additional time after the effective date of this interim final rule to fully integrate this revision into their administrative functions. VA will work with the vendors that administer the Choice Program to ensure that care under the Choice Program is authorized in accordance with this rulemaking, even as the administrative functions of these vendors continue to change to accommodate this revision.

Section 4005(d) of Public Law 114–41 amended section 101(b)(2)(A) of the Choice Act to create eligibility for veterans that are unable to be scheduled for an appointment within “the period determined necessary for [clinically necessary] care or services if such period is shorter than” VHA’s wait time goals. Sec. 4005(d), Public Law 114–41, 129 Stat. 443. This new wait-times based criterion is added as paragraph

(b)(1)(ii) of § 17.1510, and creates eligibility when VA clinically determines that a veteran requires care within a period of time that is shorter than 30 days from the date an appointment is deemed clinically appropriate by a VA health care provider, or shorter than 30 days from the date that a veteran prefers to be seen.

Section 4005(e) of Public Law 114–41 amended section 101(b)(2)(B) of the Choice Act to modify the 40-mile distance eligibility criterion. Section 101(b)(2)(B)(i)–(ii) of the Choice Act now provides that veterans may be eligible if they reside more than 40 miles from “(i) with respect to a veteran who is seeking primary care, a medical facility of the Department, including a community-based outpatient clinic, that is able to provide such primary care by a full-time primary care physician; or (ii) with respect to a veteran not covered under clause (i), the medical facility of the Department, including a community-based outpatient clinic, that is closest to the residence of the veteran.” We find it would be impracticable to apply a “seeking primary care” eligibility criterion as literally written in the Act. Many individuals that seek VA care generally do not specifically “seek” primary care, but rather “seek” treatment for a specific complaint, and are directed first to primary care for the very purpose of determining what health care needs must be addressed. For instance, a veteran who is eligible for the Program and who seeks VA care for a complaint of generalized back pain would in most cases be directed first to primary care and not immediately to an orthopedist or chiropractor. Under a strict reading of the phrase “seeking primary care” in section 4005(e) of Public Law 114–41, such a veteran might not be considered eligible under the new section 101(b)(2)(B)(i) criterion because they did not specifically “seek” primary care.

Rather than make this distinction, between those veterans “seeking primary care” and those not “seeking primary care,” we interpret section 4005(e) of Public Law 114–41 as a clarification of the eligibility criterion for the 40-mile distance determination. Effectively, this would raise the threshold for what constitutes a qualifying VA medical facility to include only those facilities with at least a full-time primary care physician. For instance, previously, if a veteran lived 10 miles from a VA-community based outpatient clinic (CBOC) that did not have a full-time primary care physician, but lived 50 miles from another VA medical facility that did, the veteran

would not be eligible for the Program because of their proximity to the CBOC. Under this interim final rule, however, that veteran would be eligible for the Program because the nearest VA medical facility with a full-time primary care physician is more than 40 miles away. We therefore do not revise the general 40-mile requirement in § 17.1510(b)(1), but do revise § 17.1505 to add a definition of “full-time primary care physician,” as well as amend the definition of “VA medical facility” to require that such a facility have a full-time primary care physician. We note that “full-time primary care physician” will mean at least one individual physician whose workload, or multiple physicians whose combined workload, equates to a 0.9 full time equivalent employee that works at least 36 clinical work hours per week. This definition’s requirement that 36 of the 40 hours must be clinical is reasonable to ensure that for purposes of determining eligibility for the Veterans Choice Program, we are taking into account how much clinical work, as opposed to administrative work, a physician actually performs. VA updates full-time equivalent employee data for primary care physicians on a regular basis, and will use such data when making these determinations.

Not distinguishing between those veterans that are “seeking primary care” and other veterans is additionally more veteran-centric because we find that a veteran’s access to specialty care can be as important as their access to primary care, and in a majority of cases if a veteran lives more than 40 miles from a VA medical facility with a full-time primary care physician, it is very likely that such veteran also lives more than 40 miles away from a VA medical facility that would be able to provide the vast majority of specialty care that we know our veteran population requires. Lastly, if VA did distinguish between those veterans that are “seeking primary care” versus all other veterans who otherwise live more than 40 miles from a VA facility with a full-time primary care physician, this may have the effect of creating an unintentional back door for veteran eligibility in the Program, whereby veterans might be directed to seek primary care to be determined eligible, when such veterans may not actually need primary care. This interpretation gives effect to section 4005(e) of Public Law 114–41 by accounting for those veterans that would be specifically “seeking primary care” and that live more than 40 miles from a VA facility with a full-time primary care physician, as well as for

those veterans seeking care generally that live more than 40 miles from a VA facility with a full-time primary care physician.

Section 4005(c) of Public Law 114–41 amended sections 101(a)(1)(B) and 101(d) of the Choice Act to permit VA to expand provider eligibility beyond those providers expressly listed in section 101(a)(1)(B) of the Choice Act, in accordance with criteria as established by VA. Sec. 4005(c), Public Law 114–41, 129 Stat. 443. Under the authority of sections 101(a)(1)(B)(v) and 101(d)(5) of the Choice Act, we revise § 17.1530(a) to refer to a new paragraph (e) that will establish eligibility for these other providers, and add a new paragraph (e) to § 17.1530 to list these providers specifically. We also revise paragraph (d) to reorganize current requirements and add new requirements for these providers, in accordance with section 101(d)(5) of the Choice Act. We revise paragraph (d) to retain all requirements related to provider credentialing and licensure, as well as the annual provision to VA of documentation of such requirements, in new paragraph (d)(1)(A). We add paragraph (d)(1)(B) to require that all providers not be excluded from participation in a Federal health care program, as defined in particular sections of the Social Security Act, as well as not be listed as excluded sources or excluded providers or entities in databases and lists maintained under certain Federal programs (such as the System for Award Management or the List of Excluded Individuals and Entities that is maintained by the U.S. Department of Health and Human Services). These requirements in § 17.1530(d)(1)(B) ensure that providers that would participate in the Program are not those that are otherwise excluded from participating in Federal health care programs for a number of reasons, such as being convicted of criminal Medicare or Medicaid fraud, patient abuse or neglect, or felony convictions for other health care-related fraud, theft, or other financial misconduct. Lastly, new paragraph (d)(2) maintains the current requirement that eligible entities must ensure that their providers meet the standards established in § 17.1530(d).

Paragraph 17.1530(e) will specifically add new eligible providers for the Veterans Choice Program. Paragraph (e)(1) of § 17.1530 adds to the list of eligible providers any health care provider that is participating in a State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), including any physician furnishing services under such program, if the provider has an agreement under

a State plan under title XIX of such Act (42 U.S.C. 1396 *et seq.*) or a waiver of such a plan. Opening eligibility to Medicaid providers will increase VA's ability to offer certain services under the Program, including dental services (for veterans otherwise eligible for VA dental care) as well as some unskilled home health services, because providers of such services are not typically one of the provider types listed in section 101(a)(1)(B)(i)–(iv) of the Choice Act. We note that these services such as dental care and certain home health services are already considered “medical services” that VA is authorized to furnish under the Choice Act as well as under other statutory authorities that permit VA to provide non-VA care to veterans. *See* 38 U.S.C. 1703 and 38 U.S.C. 8153. Making Medicaid providers eligible under the Veterans Choice Program therefore does not newly authorize the provision of services to veterans generally, but merely expands services offered under the Veterans Choice Program specifically by expanding the pool of potential Choice providers.

Paragraph (e)(2) will make certain providers of extended care services eligible, namely an Aging and Disability Resource Center, an area agency on aging, or a State agency (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)), or a center for independent living (as defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a)). Paragraph (e)(3) of § 17.1530 will establish eligibility for any provider meeting all requirements of § 17.1530(d) that is not listed in section 101(a)(1)(B)(i)–(iv) of the Choice Act or § 17.1530(e)(1)–(e)(2). This is essentially a flexible provision for these regulations so that VA can furnish care under the Program through providers who do not fall into the specific categories listed in section 101(a)(1)(B)(i)–(iv) of the Choice Act or § 17.1530(e)(1)–(e)(2), but satisfy the requirements in § 17.1530(d) to ensure that the provider is skilled and safe to provide services to veterans. This avoids the possible scenario that future required revisions to § 17.1530(e) would create delays in care being provided to veterans under the Program.

Miscellaneous Changes

To ensure that VA had the resources in place to support care for eligible veterans, the November 2014 interim final rule established different start dates for eligible veterans in § 17.1525 so that implementation of the Program could be phased in. Because the start dates in § 17.1525 have already passed, we remove the language in § 17.1525 to

include the section header, but retain § 17.1525 and mark it as reserved for future use.

Administrative Procedure Act

The Secretary of Veterans Affairs finds under 5 U.S.C. 553(b)(B) that there is good cause that advance notice and opportunity for public comment are impracticable, unnecessary, or contrary to the public interest and under 5 U.S.C. 553(d)(3) that there is good cause to publish this rule with an immediate effective date. Section 101(n) of the Choice Act authorized VA to implement the Veterans Choice Program through an interim final rule, and provided a deadline of no later than November 5, 2014, the date that is 90 days after the date of the enactment of the law. Additionally, the Program is only authorized to run until August 7, 2017, or until funds expire, which creates a need for expedited action. The changes made by the Construction Authorization and Choice Improvement Act included an immediate effective date under section 3(b) of that Act. These provisions clearly demonstrate that Congress intended that VA act quickly in expanding access to non-VA care options.

This interim final rule changes the criteria VA may consider when determining if a veteran faces an unusual or excessive burden in traveling to the nearest VA medical facility. This interim final rule also expands eligibility for veterans in other ways (through the new criteria related to wait times and to the distance requirements), as well as expands eligibility for providers as required and permitted by the most recent amendments to the Choice Act. These changes will increase the number of veterans who are eligible for the Veterans Choice Program. In order for these veterans to have access to needed health care under the Program, it is essential that the revised criteria be made effective as soon as possible. For the above reasons, we are issuing this rule as an interim final rule. However, VA will consider and address comments that are received within 120 days of the date this interim final rule is published in the **Federal Register**.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this interim final rule, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this

rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information, at 38 CFR 17.1530(d), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this interim final rule. The information collection requirements for § 17.1530(d) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0823.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by OMB, unless OMB waives such review, as “any regulatory action that is 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 governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that this is an economically significant regulatory action under Executive Order 12866. VA’s regulatory impact analysis can be found as a supporting document at [http://](http://www.regulations.gov)

www.regulations.gov, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its regulatory impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

Congressional Review Act

This regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801–08, because it may result in an annual effect on the economy of \$100 million or more. Although this regulatory action constitutes a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 804(2), it is not subject to the 60-day delay in effective date applicable to major rules under 5 U.S.C. 801(a)(3) because the Secretary finds that good cause exists under 5 U.S.C. 808(2) to make this regulatory action effective on the date of publication, consistent with the reasons given for the publication of this interim final rule. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulatory action and VA’s Regulatory Impact Analysis.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 (adjusted annually for inflation) in any 1 year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will not have a significant economic impact on participating eligible entities and providers who enter into agreements with VA. To the extent there is any such impact, it will result in increased business and revenue for them. We also do not believe there will be a significant economic impact on insurance companies, as claims will only be submitted for care that will otherwise have been received whether such care was authorized under this Program or not. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from

the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on October 9, 2015, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: November 19, 2015.

Michael P. Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.1505 by:

- a. Revising the definition of “episode of care”.
- b. Adding a definition of “full-time primary care physician”.
- c. Revising the definition of “VA medical facility”.
- d. Revising the authority citation.

The revisions and addition read as follows:

§ 17.1505 Definitions.

* * * * *

Episode of care means a necessary course of treatment, including follow-up appointments and ancillary and specialty services, which lasts no longer than 1 calendar year from the date of the first appointment with a non-VA health care provider.

Full-time primary care physician means a single VA physician whose workload, or multiple VA physicians whose combined workload, equates to 0.9 full time equivalent employee working at least 36 clinical hours a week at the VA medical facility and who provides primary care as defined by their privileges or scope of practice and licensure.

* * * * *

VA medical facility means a VA hospital, a VA community-based outpatient clinic, or a VA health care center, any of which must have at least one full-time primary care physician. A Vet Center, or Readjustment Counseling Service Center, is not a VA medical facility.

* * * * *

(Authority: Sec. 101, Pub. L. 113–146, 128 Stat. 1754; Sec. 4005, Pub. L. 114–41, 129 Stat. 443)

- 3. Amend § 17.1510 by revising paragraphs (a), (b)(1), (b)(4)(ii), and the authority citation to read as follows:

§ 17.1510 Eligible veterans.

* * * * *

(a) A veteran must be enrolled in the VA health care system under § 17.36.

(b) * * *

(1) The veteran attempts, or has attempted, to schedule an appointment with a VA health care provider, but VA is unable to schedule an appointment for the veteran within:

(i) The wait-time goals of the Veterans Health Administration; or

(ii) With respect to such care or services that are clinically necessary, the period VA determines necessary for such care or services if such period is shorter than the wait-time goals of the Veterans Health Administration.

* * * * *

(4) * * *

(ii) Faces an unusual or excessive burden in traveling to such a VA

medical facility based on geographical challenges, such as the presence of a body of water (including moving water and still water) or a geologic formation that cannot be crossed by road; environmental factors, such as roads that are not accessible to the general public, traffic, or hazardous weather; a medical condition that affects the ability to travel; or other factors, as determined by VA, including but not limited to:

(A) The nature or simplicity of the hospital care or medical services the veteran requires;

(B) The frequency that such hospital care or medical services need to be furnished to the veteran; and

(C) The need for an attendant, which is defined as a person who provides required aid and/or physical assistance to the veteran, for a veteran to travel to a VA medical facility for hospital care or medical services.

* * * * *

(Authority: Sec. 101, Pub. L. 113–146, 128 Stat. 1754; Section 3(a)(2) of Pub. L. 114–19, 129 Stat. 215)

§ 17.1525 [Removed and Reserved]

- 4. Remove and reserve § 17.1525

- 5. Amend § 17.1530 by revising paragraphs (a), and (d), adding paragraph (e), and revising the authority citation to read as follows:

§ 17.1530 Eligible entities and providers.

(a) *General.* An entity or provider is eligible to deliver care under the Veterans Choice Program if, in accordance with paragraph (c) of this section, it is accessible to the veteran and is an entity or provider identified in section 101(a)(1)(B)(i)–(iv) of the Veterans Access, Choice, and Accountability Act of 2014 or is an entity identified in paragraph (e) of this section, and is either:

* * * * *

(d) *Requirements for health care providers.* (1) To be eligible to furnish care or services under the Veterans Choice Program, a health care provider must:

(i) Maintain at least the same or similar credentials and licenses as those required of VA’s health care providers, as determined by the Secretary. The agreement reached under paragraph (b) of this section will clarify these requirements. Eligible health care providers must submit verification of such licenses and credentials maintained by the provider to VA at least once per 12-month period.

(ii) Not be excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C.

1320a–7b(f)) under section 1128 or 1128A of such Act (42 U.S.C. 1320a–7 and 1320a–7a)), not be identified as an excluded source on the list maintained in the System for Award Management or any successor system, and not be identified on the List of Excluded Individuals and Entities that is maintained by the Office of the Inspector General of the U.S. Department of Health and Human Services.

(2) Any entities that are eligible to provide care through the Program must ensure that any of their providers furnishing care and services through the Program meet the standards identified in paragraph (d)(1) of this section. An eligible entity may submit this information on behalf of its providers.

(e) *Other eligible entities and providers.* In accordance with sections 101(a)(1)(B)(v) and 101(d)(5) of the Veterans Access, Choice, and Accountability Act of 2014 (as amended), the following entities or providers are eligible to deliver care under the Veterans Choice Program, subject to the additional criteria established in this section.

(1) A health care provider that is participating in a State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), including any physician furnishing services under such program, if the health care provider has an agreement under a State plan under title XIX of such Act (42 U.S.C. 1396 *et seq.*) or a waiver of such a plan;

(2) An Aging and Disability Resource Center, an area agency on aging, or a State agency (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)), or a center for independent living (as defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a)).

(3) A health care provider that is not identified in paragraph (e)(1) or (2) of this section, if that provider meets all requirements under paragraph (d) of this section.

(Authority: Sec. 101, Pub. L. 113–146, 128 Stat. 1754; Sec. 4005, Pub. L. 114–41, 129 Stat. 443)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0823.)

[FR Doc. 2015–29865 Filed 11–30–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635****[Docket No. 150121066–5717–02]****RIN 0648–XE335****Atlantic Highly Migratory Species;
Atlantic Bluefin Tuna Fisheries**

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

ACTION: Temporary rule; inseason General category bluefin tuna quota transfer and retention limit adjustment.

SUMMARY: NMFS is transferring 80 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category for the remainder of the 2015 fishing year. This transfer results in an adjusted 2015 General category quota of 646.7 mt. NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit from four large medium or giant BFT per vessel per day/trip to three large medium or giant BFT per vessel per day/trip for the remainder of the 2015 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective November 25, 2015 through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated

HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Earlier this year, NMFS implemented a final rule that increased the U.S. BFT quota and subquotas per ICCAT Recommendation 14–05 (80 FR 52198, August 28, 2015). The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. Based on the General category base quota of 466.7 mt, the subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. To date this year, NMFS has published four inseason quota transfers that have adjusted and distributed the available 2015 Reserve category quota among other quota categories (80 FR 7547, February 22, 2015; 80 FR 45098, July 29, 2015; 80 FR 46516, August 5, 2015; and 80 FR 68265, November 4, 2015). The Reserve category balance currently is 82.1 mt. The adjusted General category quota, following the four inseason actions, is 566.7 mt.

Quota Transfer

The 2015 General category fishery was open January 1, 2015, through March 31, 2015, reopened June 1, 2015, and remains open until December 31, 2015, or until the General category quota is reached, whichever comes first.

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering determination criteria provided under § 635.27(a)(8), including five new criteria recently added in Amendment 7. The determination criteria are: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular

category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category’s quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the General category fishery for the end of 2015, including, but not limited to, the following: Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock, biological samples collected from BFT landed by General category fishermen and provided by tuna dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of bluefin tuna before the end of the fishing year; and the estimated amounts by which quotas for other gear categories of the fishery might be exceeded. General category landings in the winter BFT fishery, which typically begins in December or January each year, are highly variable and depend on availability of commercial-sized BFT to participants. Commercial-sized BFT

continue to be landed by General category vessels.

Without a quota transfer at this time, NMFS would have to close the 2015 General category fishery as the currently available General category quota would be reached shortly. As of November 20, 2015, the General category has landed approximately 550 mt, or 97 percent of its available 2015 quota of 566.7 mt. Overall, approximately 79 percent of the total of the commercial BFT subquotas for 2015 has been harvested. NMFS will need to account for 2015 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that even with this transfer. This quota transfer would provide additional opportunities to harvest the U.S. bluefin quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery.

Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations. This transfer would be consistent with the quotas recently established and analyzed in the Atlantic bluefin tuna quota final rule (80 FR 52198, August 28, 2015) and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents.

Based on the considerations above, NMFS is transferring 80 mt of Reserve category quota to the General category for the remainder of 2015, resulting in adjusted General and Reserve category quotas for 2015 of 646.7 mt and 2.1 mt, respectively. NMFS will close the 2015 General category fishery when the adjusted General category quota of 646.7 mt has been reached, or it will close automatically on December 31, 2015.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above. For the 2015 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to three large medium or giant BFT for

the January subquota period (79 FR 77943, December 29, 2014), which closed March 31, 2015; and four large medium or giant BFT for the June through August period (80 FR 27863, May 15, 2015) as well as the September, October through November, and December periods (80 FR 51959, August 27, 2015). NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the remainder of the fishing year. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock, additional opportunity to land bluefin tuna would support the collection of a broad range of data for the biological studies and for stock monitoring purposes. Regarding the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the fishery management plan, this action would be taken consistent with the previously implemented and analyzed quotas, and it is not expected to negatively impact stock health or otherwise affect the stock in ways not previously analyzed. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which established the current range over which NMFS may set the General category daily retention limit (*i.e.*, from zero to five fish (76 FR 74003, November 30, 2011)). As described above, a principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted for the remainder of the year. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its available quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS adjusts the General category retention limit from four to three large medium or giant BFT per vessel per day/trip, effective November 25, 2015 through December 31, 2015.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the limit that will apply through the end of the year), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of three fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General, HMS Charter/Headboat, Harpoon, and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustment or closure is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access hmspermits.noaa.gov, for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer and daily retention limit for the remainder of the year is impracticable as NMFS is reacting as quickly as possible to updated data and information that then requires

immediate action to be effective on the fishing grounds. NMFS could not effectively react to this data if, in implementing the retention limit, it allowed a public comment period, which, as it relates to quota transfers, would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria.

Delays in adjusting the retention limit may result in the available quota being met or exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under a lower limit. This could adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest BFT under retention limits set in response to the most recent data available. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the designated time periods. Adjustment of the retention limit needs to be effective as soon as possible, to extend fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 25, 2015.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2015–30464 Filed 11–25–15; 4:15 pm]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357–5999–02]

RIN 0648–XD898

Atlantic Highly Migratory Species; 2016 Atlantic Shark Commercial Fishing Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes an opening date of January 1, 2016, for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico. This final rule also establishes the quotas for the 2016 fishing season based on over- and/or underharvests experienced during 2015 and previous fishing seasons. The large coastal shark (LCS) retention limit for directed shark limited access permit holders will start at 45 LCS other than sandbar sharks per trip in the Gulf of Mexico region and at 36 LCS other than sandbar sharks per trip in the Atlantic region. These retention limits for directed shark limited access permit holders may decrease or increase during the year to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. NMFS anticipates that the retention limit in the Atlantic region will likely increase to the default limit of 45 LCS other than sandbar sharks per trip around July 15, 2016, subject to NMFS' evaluation of the inseason trip limit adjustment criteria. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2016. The 2016 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial shark retention limits, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive

management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On August 18, 2015 (80 FR 49974), NMFS published a rule proposing the 2016 opening dates for the Atlantic commercial shark fisheries and quotas, based on shark landings information reported as of July 15, 2015. The August 2015 proposed rule contains details that are not repeated here. The comment period on the proposed rule ended on September 17, 2015.

During the comment period, NMFS received several written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As further detailed in the Response to Comments section, after considering all the comments, NMFS is opening the fishing seasons for all shark management groups on January 1, 2016, as proposed in the August 18, 2015, proposed rule. For directed shark limited access permit holders, the Gulf of Mexico blacktip, aggregated LCS, and hammerhead management groups will start the fishing season with a retention limit of 45 LCS other than sandbar sharks per vessel per trip. The aggregated LCS and hammerhead shark management groups in the Atlantic region will start the fishing season with a retention limit of 36 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, which is a change from the proposed rule. Also, some of the quotas have changed since the proposed rule, based on updated landings information as of October 16, 2015. The retention limit for incidental shark limited access permit holders has not changed and remains at 3 LCS other than sandbar sharks per trip and a combined total of 16 small coastal sharks (SCS) and pelagic sharks, combined, per trip, consistent with § 635.24(a)(3) and (4).

This final rule serves as notification of the 2016 opening dates of the Atlantic commercial shark fisheries and 2016 quotas, based on shark landings updated as of October 16, 2015, pursuant to the "opening commercial fishing season" criteria at § 635.27(b)(3)(i) through (vii). This action does not change the annual base commercial quotas established under the 2006 Consolidated HMS FMP and its amendments for any shark management group. Any such changes would be performed through a separate action. Rather, this action adjusts the annual base commercial quotas for 2016

based on over- and/or underharvests that occurred in 2015 and previous fishing seasons, consistent with existing regulations.

Response to Comments

NMFS received 6 written comments on the proposed rule from fishermen, dealers, and other interested parties. All written comments can be found at <http://www.regulations.gov/> by searching for RIN 0648–XD898. NMFS received approximately 5 oral comments which were received through phone conversations. All of the oral comments are incorporated with the written comments below.

A. LCS Management Group Comments

Comment 1: NMFS received several comments regarding the proposed opening date for the aggregated LCS and hammerhead management groups in the Atlantic region. The North Carolina Division of Marine Fisheries (NCDMR) and other commenters from the southern and northern part of the region supported the proposed opening date of January 1 for the aggregated LCS and hammerhead management groups, retention limit, and inseason retention limit adjustments for LCS fisheries as long as the majority of the quota is available later in the year. The comments from some of the fishermen supporting the January 1 opening date noted they preferred the opportunity to land some LCS that were caught while targeting SCS and other non-shark species rather than discard them if the season is closed in January. NMFS also received a few comments regarding the timing for the inseason retention limit adjustment. One commenter supported the January 1 opening date with reducing the retention limit on March 1 to incidental levels (3 LCS other than sandbar sharks per vessel per trip) before increasing the retention limit on August 1 to 55 LCS other than sandbar sharks per vessel per trip. Another commenter supported the January 1 opening date until 50 percent of the quota is reached before reducing the retention limit to incidental levels and then increasing the retention limit on July 1 to 55 LCS other than sandbar sharks per vessel per trip. NMFS also received comments opposing the proposed opening date of January 1 with inseason retention limit adjustments. The Commonwealth of Virginia Marine Resources Commission requested a June or July opening date for the LCS fisheries to allow their state-water fishermen an opportunity to fish for sharks under the proposed retention limit, while other commenters suggested a July 1 LCS fishery opening date at the

proposed retention limit with no inseason retention limit adjustments. The comments from some of the fishermen in the southern part of the region noted they preferred the opportunity to fish for sharks in October through December because they participate in other, non-shark fisheries at the beginning of the year and in the shark fisheries later in the year, when there are no other fisheries open in Florida. Also, these commenters are concerned that having the LCS fisheries in the Atlantic and Gulf of Mexico regions open at the same time will flood the market with shark products, causing a dramatic drop in potential revenue.

Response: NMFS evaluates the “opening commercial fishing season” criteria (§ 635.27(b)(3)) when choosing an opening date. These criteria include: (1) The available annual quotas for the current fishing season for the different species/management groups based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons; (2) estimated season length based on available quota(s) and average weekly catch rates of different species and/or management group from the previous years; (3) length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years; (4) variations in seasonal distribution, abundance, or migratory patterns of the different species/management groups based on scientific and fishery information; (5) effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas; (6) effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or (7) effects of a delayed opening with regard to fishing opportunities in other fisheries.

After evaluating these criteria, as described in the proposed rule, and reviewing the public comments, NMFS has decided to open the fisheries in the Atlantic region with a lower retention limit than proposed. Specifically, on January 1, 2016, the LCS fisheries in the Atlantic region will open with a retention limit of 36 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders. NMFS has determined that a lower retention limit at the start of the season will allow NMFS to more easily and closely monitor the quota and catch rates in the beginning of the year to help ensure equitable fishing opportunities

later in the year. NMFS chose 36 LCS other than sandbar sharks per vessel per trip because that was the commercial retention limit for the fishery from 2013 through August 2015, and thus is familiar to both NMFS and the participants in the fishery.

The proposed rule stated that, if it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish, NMFS will reduce the commercial retention limit after a portion of the quota is harvested (e.g., 30 percent) and then raise the commercial retention limit at a later date (e.g., July 1 or 15) to allow greater fishing opportunities later in the year. Reducing the retention limit when 50 percent of the quota has been harvested, as suggested by a commenter, would likely not allow for fishing opportunities later in the year when the majority of the fishing occurs. Under § 635.28(b), NMFS closes any shark management group that has reached, or is projected to reach, 80 percent of the available quota. After considering public comment, NMFS believes that it is more appropriate to consider a retention limit reduction, when approximately 20 percent of the quota has been harvested (which is expected to occur in March or April, based on landings data from prior years). Any such action will depend on consideration of the factors under § 635.24(a)(8). If catch rates and landings are similar to past years, NMFS anticipates that it could reduce the retention limit to 3 LCS other than sandbar sharks, which is consistent with the retention limit for incidental limited access permit holders, when the 20 percent is reached. However, if the quota is being landed quickly at the beginning of the year, or if, after reducing the retention limit, the reduction to 3 LCS other than sandbar sharks does not slow the rate of harvest enough to allow for a fishery later in the year, NMFS could reduce the retention limit to 0. Alternatively, if the quota is being landed slowly, NMFS could choose not to reduce the retention limit, or not to reduce it all the way down to 3.

After considering public comment, NMFS anticipates that it will increase the commercial retention limit around July 15, 2016, as this was the date used for prior season opening dates. The retention limit will be the default level of 45 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, or another amount, as deemed appropriate after considering the inseason trip limit adjustment criteria (§ 635.24(a)(8)).

NMFS believes that utilizing the inseason retention limit adjustment during the fishing season will promote equitable fishing opportunities in the Atlantic region, while still allowing the majority of quota to be harvested later in the year. The January 1 opening date should allow fishermen in the southern and northern portions of the Atlantic region the opportunity to fish at the beginning of the year, while providing all fishermen in the Atlantic region fishing opportunities later in the year, when the majority of fishing occurs, as the majority of the quota will still be available.

Regarding the comments from constituents suggesting when to adjust the retention limit, NMFS intends to reduce the retention limit to 3 LCS other than sandbar sharks per vessel per trip if the quota is being caught too quickly (e.g., if approximately 20 percent of the quota is harvested at the beginning of the year), and then anticipates that it will increase the retention limit to the default level of 45 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, or another amount, as deemed appropriate after considering the inseason trip limit adjustment criteria, around July 15, 2016. If NMFS were to reduce the retention limit when approximately 20 percent of the quota is harvested, based on past landings data, the aggregated LCS quota will likely reach 20 percent around March, which is similar to the time suggested by a commenter. Regarding an increase on August 1, NMFS will determine any potential increase in the retention limit at a later time, but notes that an increase around July 15 would be closer to recent opening dates of the fishery than August 1 and could better promote equitable fishing opportunities. Regarding the comment to wait until 50 percent of the quota was harvested before reducing the retention limit and then increasing the retention limit on July 1, when the Atlantic LCS fisheries last opened in January, the quota reached 50 percent in July. Thus, under that scenario, it is unlikely that any adjustment would be needed until much later in the season (e.g., August). In addition, under § 635.28(b), NMFS closes any shark management group that has reached, or is projected to reach, 80 percent of the available quota. Thus, waiting until 50 percent of the quota has been harvested before reducing the retention limit would likely prevent the majority of the quota from being available later in the year, which is what most of the public comments requested.

Regarding the comments from the Commonwealth of Virginia Marine

Resources Commission and other commenters requesting an opening date in June or July in order to allow state-water fishermen the opportunity to fish and regarding the comments from constituents who prefer a later start date in order to fish for sharks at the end of the year, NMFS agrees that the fishery should remain open later in the year and anticipates having the majority of the quota available after July 15, 2016. Based on past landings data, having the majority of the quota available after July 15 would allow Virginia state-water fishermen the opportunity to fish for sharks and potentially allow the fishery to be open in October through December. Regarding the comments that having the LCS fisheries in the Atlantic and Gulf of Mexico regions open at the same time will impact the market prices, NMFS has no control over the market prices and this is not one of the criteria NMFS evaluates when choosing an opening date. However, in the past, the LCS fisheries in the Atlantic and Gulf of Mexico regions have been open at the same time, and during those times, NMFS has not noticed any dramatic impacts on the ex-vessel prices in either region. For example, in 2013, when both regional LCS fisheries were open in January, the ex-vessel price for Atlantic aggregated LCS stayed consistent throughout the year and was much higher than the Gulf of Mexico aggregated LCS ex-vessel prices.

Comment 2: NMFS received comments regarding the proposed sub-regional opening dates and commercial retention limit for the Gulf of Mexico blacktip, aggregated LCS, and hammerhead management groups. One commenter supported the proposed January 1 opening date for both Gulf of Mexico sub-regions and the proposed retention limit, suggesting that NMFS use this season as an experiment to see how the fishery operates under the new management measures from Amendment 6 to the 2006 Consolidated HMS FMP (Amendment 6). Another commenter suggested staggering the Gulf of Mexico sub-regional opening dates and increasing the retention limit. Specifically, the commenter suggested that both sub-regions open at 55 LCS other than sandbar sharks per vessel per trip, with the western Gulf of Mexico sub-region opening on January 1 and the eastern Gulf of Mexico sub-region opening on March 1.

Response: After considering public comment and the “opening commercial fishing season” criteria (§ 635.27(b)(3)) described in the proposed rule, NMFS has determined that opening the Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark management groups

on January 1 at 45 LCS other than sandbar sharks per vessel per trip for directed shark limited access permit holders, as proposed, will promote equitable fishing opportunities for constituents in each sub-region. In reaching this determination, NMFS considered, in particular, the length of the season for the different species and/or management groups in 2015 and whether fishermen were able to participate in the fishery (§ 635.27(b)(3)(iii)), and found that with a January 1 opening date in 2015, the length of the fishing season provided all fishermen with equitable fishing opportunities to participate in the fishery in 2015.

Regarding the comment relating to the different sub-regional opening dates, at this time, NMFS prefers to open both sub-regions at the same time to evaluate how the changes in the regulations, such as the increase in the retention limit, affect the fishery before making other changes to the commercial shark fishing season. NMFS may consider staggered opening dates for the sub-regions in future years if such an approach is needed to promote equitable fishing opportunities throughout the region.

B. Atlantic SCS Management Group Comments

Comment 3: NMFS received comments regarding the proposed opening date for the non-blacknose SCS and blacknose shark management groups in the Atlantic region. Most commenters, including NCDMR, supported the proposed January 1 opening date, while only a few commenters requested that the SCS fisheries not open until August to ensure that the southern part of the fishery would not be closed because of the blacknose shark quota linkage.

Response: Taking into consideration the “opening commercial fishing season” criteria (§ 635.27(b)(3)), as described in the proposed rule, and the general public support of the proposed opening date, NMFS has determined that keeping the proposed opening date of January 1 for the non-blacknose SCS and blacknose shark management groups in the Atlantic region will provide commercial shark fishermen year-round access to the increased non-blacknose SCS quota. In reaching this determination, NMFS considered, in particular, the current length of the 2015 season for the different species and/or management groups and whether fishermen were able to participate in the fishery in 2015 (§ 635.27(b)(3)(iii)), and found that with a January 1 opening date in 2015, the length of the fishing

season provided all fishermen with equitable fishing opportunities to participate in the fishery in 2015. NMFS still encourages fishermen south of 34 degrees to avoid blacknose sharks to keep the non-blacknose SCS fishery open year-round in that area. NMFS linked these quotas due to concerns regarding the incidental harvest of blacknose sharks, which are overfished, while fishermen were targeting non-blacknose SCS. During the Amendment 3 to the 2006 Consolidated HMS FMP rulemaking process (75 FR 30484; June 1, 2010), fishermen indicated that they could avoid catching blacknose sharks when fishing for non-blacknose sharks. Fishermen successfully avoided blacknose sharks for several years. However, in the past few years, a small number of individuals began targeting blacknose sharks, resulting in early closures.

Comment 4: NMFS received comments to adjust the commercial retention limit for SCS, implement a commercial retention limit for Atlantic blacknose sharks, and establish a bycatch allowance for non-blacknose SCS (approximately 200 lb dw) once the blacknose quota is reached to reduce dead discards of SCS.

Response: This comment is outside the scope of this rulemaking because there is currently no commercial retention limit for blacknose sharks, and the purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous years and set opening dates for the 2016 shark seasons. The commenter thought that because NMFS was proposing to adjust the commercial retention limit for the LCS fisheries that NMFS could do the same for SCS fisheries. However, at this time, the only retention limit for SCS is for incidental shark permit holders, who can retain up to 16 SCS or pelagic sharks per vessel per trip.

NMFS considered a commercial retention limit for blacknose shark in Amendment 5a to the 2006 Consolidated HMS FMP (see Section 2.3, Alternatives Considered But Not Further Analyzed, of the Final Environmental Impact Statement for Amendment 5a) and received similar comments during the public comment period for Amendment 6. In those actions, NMFS preferred to address blacknose shark landings and discards by linking the blacknose shark and non-blacknose SCS quotas, which should provide a greater and more effective incentive for reducing landings of blacknose sharks than a retention limit, thus more effectively managing the blacknose fishery in a manner that maximizes resource sustainability,

while minimizing, to the greatest extent possible, socioeconomic impacts. After the blacknose shark quota was reached much earlier this year (June 7) than in previous seasons (July 28, 2014, and September 30, 2013), NMFS examined the blacknose shark landings from the HMS electronic dealer data from 2015 on a per trip basis. These data indicate that the majority of the trips (60 percent of the total number of trips) landed less than 200 lb dw of blacknose sharks per trip; however, there were multiple trips (11 percent of the total number of trips) that landed more than 700 lb dw of blacknose sharks per trip, with some as high as 3,170 lb dw, which is approximately 8 percent of the entire quota. Because the blacknose shark linkage has caused the SCS fishery south of 34 degrees to close sooner than in previous seasons and given that the commercial quota continues to be overharvested, NMFS is re-considering the appropriateness of a commercial blacknose retention limit and may pursue this issue in a separate action.

C. General Comments

Comment 5: NMFS received comments to stop all shark fishing.

Response: This comment is outside the scope of this rulemaking because the purpose of this rulemaking is to adjust quotas for the 2016 shark seasons based on over- and underharvests from the previous years and set opening dates for the 2016 shark seasons. Management of the Atlantic shark fisheries is based on the best available science to achieve optimum yield while also rebuilding overfished shark stocks and preventing overfishing. The final rule does not reanalyze the overall management measures for sharks, which were analyzed in the 2006 Consolidated HMS FMP and its amendments. NMFS is considering further shark management measures, including those to rebuild shark stocks or prevent overfishing, in other upcoming rulemakings, such as Amendments 5b to the 2006 Consolidated HMS FMP.

Comment 6: NMFS received comments from the NCDMR that requested NMFS to perform a benchmark stock assessment on Atlantic blacktip and sandbar sharks as soon as possible.

Response: This comment is outside the scope of this rulemaking because the purpose of this rulemaking is to adjust quotas based on over- and underharvests from the previous years and set opening dates for the 2016 shark seasons. Most of the domestic shark stock assessments follow the SEDAR process. This process is also used by the South Atlantic, Gulf of Mexico, and

Caribbean Fishery Management Councils and is designed to provide transparency throughout the stock assessment. With regard to the timing of upcoming shark stock assessments, NMFS aims to conduct a number of shark stock assessments every year and to regularly reassess these stocks. The number of species that can be assessed each year depends on whether assessments are establishing baselines or are only updates to previous assessments. Assessments also depend on ensuring there are data available for a particular species. Tentatively, in addition to the shark assessments being conducted by the International Commission for the Conservation of Atlantic Tunas (ICCAT), NMFS intends to conduct a dusky shark update assessment in 2016 and a Gulf of Mexico blacktip shark update assessment in 2017. NMFS is currently considering options that would allow for both Atlantic blacktip and sandbar sharks to be assessed in 2018.

Changes From the Proposed Rule

NMFS made four changes to the proposed rule, as described below.

1. NMFS changed the final eastern Gulf of Mexico blacktip shark quota from the 28.9 mt dw (63,835 lb dw) in the proposed rule to 28.9 mt dw (63,819 lb dw), a difference of 16 lb dw, based on updated landings through October 16, 2015. In the 2016 shark season proposed rule (80 FR 49974; August 18, 2015), which was based on data available through July 17, 2015, the 2016 adjusted annual quota for eastern Gulf of Mexico blacktip shark was proposed to be 28.9 mt dw (63,835 lb dw), based on an underharvest of 0.1 mt dw (308 lb dw) from 2014 and an underharvest of 3.7 mt dw from 2015 (8,088 lb dw). NMFS explained in the proposed rule that it would adjust the proposed quotas based on dealer reports as of mid-October or mid-November 2015. Based on updated landings data through October 16, 2015, the overall 2015 Gulf of Mexico blacktip shark management group underharvest was 37.4 mt dw (82,373 lb dw). Consistent with Amendment 6 and the August 2015 proposed rule, NMFS will account for underharvest based on the sub-regional quota percentage split. Thus, the eastern Gulf of Mexico blacktip shark quota is increased by 9.8 percent of the 2015 underharvest or 3.7 mt dw (8,072 lb dw). Therefore, the 2016 adjusted annual quota for eastern Gulf of Mexico blacktip shark is 28.9 mt dw (63,819 lb dw) (25.1 mt dw annual base quota + 0.1 mt dw from 2014 underharvest + 3.7 mt dw from the 2015 underharvest = 28.9 mt dw). Landings

information beyond October 16, 2015, was not available while NMFS was writing this rule. This final rule used the most recent available information to allow NMFS to properly analyze the fishery and open the fishery as proposed on January 1, 2016. Any landings between October 16 and December 31, 2015, will be accounted for in the 2017 shark fisheries quotas, as appropriate.

2. NMFS changed the final western Gulf of Mexico blacktip shark quota from the 266.6 mt dw (587,538 lb dw) in the proposed rule to 266.5 mt dw (587,396 lb dw), a difference of 142 lb dw, based on updated landings through October 16, 2015. In the proposed rule, which was based on data available through July 17, 2015, the 2016 adjusted annual quota for western Gulf of Mexico blacktip shark was proposed to be 266.6 mt dw (587,538 lb dw), based on an underharvest of 1.3 mt dw (2,834 lb dw) from 2014 and an underharvest of 33.7 mt dw (74,443 lb dw) from 2015. Based on updated landings data through October 16, 2015, the overall 2015 Gulf of Mexico blacktip shark management group was underharvested by 37.4 mt dw (82,373 lb dw). Consistent with Amendment 6 and the August 2015 proposed rule, NMFS will account for underharvest based on the sub-regional quota percentage split. Thus, the western Gulf of Mexico blacktip shark quota is increased by 90.2 percent of the 2015 underharvest, or 33.7 mt dw (74,301 lb dw). Therefore, the 2016 adjusted annual quota for eastern Gulf of Mexico blacktip shark is 266.5 mt dw (587,396 lb dw) (231.5 mt dw annual base quota + 1.3 mt dw from 2014 underharvest + 33.7 mt dw from the 2015 underharvest = 266.5 mt dw 2016 adjusted annual quota). As described

above, landings information beyond October 16, 2015, was not available while NMFS was writing this rule. This final rule used the most recent available information to allow NMFS to properly analyze the fishery and open the fishery on January 1, 2016. Any landings between October 16 and December 31, 2015, will be accounted for in the 2017 shark fisheries quotas, as appropriate.

3. NMFS changed the final Atlantic blacknose shark quota from the 15.7 mt dw (34,700 lb dw) in the proposed rule to 15.7 mt dw (34,653 lb dw), a difference of 47 lb, based on updated landings through October 16, 2015. In the proposed rule, the quota for the Atlantic blacknose shark management group was proposed to be 15.7 mt dw (34,700 lb dw), due to an adjustment of 0.5 mt dw (1,111 lb dw) for a 2012 overharvest that was spread over five years and an adjustment of 1.0 mt dw (2,110 lb dw) for a 2015 overharvest that was spread over three years. However, based on the updated landings data, NMFS found that the 2015 quota was overharvested by 3.0 mt dw (6,471 lb dw) and not the 6,328 lb dw originally considered. Consistent with the proposed rule, NMFS will spread this overharvest amount over 3 years at 1.0 mt dw (2,157 lb dw) each year from 2016–2018. Thus, NMFS will reduce the 2016 base annual quota by 1.5 mt dw (3,268 lb dw), based on the 2012 overharvest amount and the most recent estimates of the 2015 landings. Therefore, the 2016 adjusted annual quota for Atlantic blacknose shark is 15.7 mt dw (34,653 lb dw) (17.2 mt dw annual base quota – 0.5 mt dw 2012 overharvest – 1.0 mt dw 2015 overharvest = 15.7 mt dw 2016 adjusted annual quota). As described above,

landings information beyond October 16, 2015, was not available while NMFS was writing this rule. This final rule used the most recent available information to allow NMFS to properly analyze the fishery and open the fishery on January 1, 2016. Any landings between October 16 and December 31, 2015, will be accounted for in the 2017 shark fisheries quotas, as appropriate.

4. NMFS changed the retention limit for directed shark limited access permit holders at the start of the commercial shark fishing season for the aggregated LCS and hammerhead shark management groups in the Atlantic region from 45 LCS other than sandbar sharks per vessel per trip to 36 LCS other than sandbar sharks per vessel per trip. As explained above, NMFS changed the retention limit after considering the “opening commercial fishing season” criteria (§ 635.27(b)(3)), public comment, and the 2015 landings data in order to promote equitable fishing opportunities throughout the Atlantic region.

2016 Annual Quotas

This final rule adjusts the 2016 commercial quotas due to over- and/or underharvests in 2015 and previous fishing seasons, based on landings data through October 16, 2015. The 2016 annual quotas by species and species group are summarized in Table 1. All dealer reports that are received by NMFS after October 16, 2015, will be used to adjust the 2017 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described in the “Changes from the Proposed Rule” section.

TABLE 1—2016 ANNUAL QUOTAS FOR THE ATLANTIC SHARK FISHERIES

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. 1 mt dw = 2,204.6 lb dw]

Region or sub-region	Management group	2015 annual quota (A)	Preliminary 2015 landings ¹ (B)	Adjustments (C)	2016 Base annual quota (D)	2016 Final annual quota (D+C)
Eastern Gulf of Mexico.	Blacktip Sharks ...	25.1 mt dw (55,439 lb dw).	21.5 mt dw (47,366 lb dw) ² .	3.8 mt dw (8,380 lb dw) ³ .	25.1 mt dw (55,439 lb dw).	28.9 mt dw (63,819 lb dw)
	Aggregated Large Coastal Sharks.	85.5 mt dw (188,593 lb dw).	84.5 mt dw (186,223 lb dw) ².	.....	85.5 mt dw (188,593 lb dw).	85.5 mt dw (188,593 lb dw)
	Hammerhead Sharks.	13.4 mt dw (29,421 lb dw).	7.3 mt dw (16,198 lb dw) ².	.....	13.4 mt dw (29,421 lb dw).	13.4 mt dw (29,421 lb dw)
Western Gulf of Mexico.	Blacktip Sharks ...	231.5 mt dw (510,261 lb dw).	197.7 mt dw (435,961 lb dw) ² .	35.0 mt dw (77,135 lb dw) ³ .	231.5 mt dw (510,261 lb dw).	266.5 mt dw (587,396 lb dw)
	Aggregated Large Coastal Sharks.	72.0 mt dw (158,724 lb dw).	69.6 mt dw (153,380 lb dw) ².	.....	72.0 mt dw (158,724 lb dw).	72.0 mt dw (158,724 lb dw)
	Hammerhead Sharks.	11.9 mt dw (23,301 lb dw).	6.5 mt dw (14,360 lb dw) ².	.....	11.9 mt dw (23,301 lb dw).	11.9 mt dw (23,301 lb dw)

TABLE 1—2016 ANNUAL QUOTAS FOR THE ATLANTIC SHARK FISHERIES—Continued

[All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. 1 mt dw = 2,204.6 lb dw]

Region or sub-region	Management group	2015 annual quota (A)	Preliminary 2015 landings ¹ (B)	Adjustments (C)	2016 Base annual quota (D)	2016 Final annual quota (D+C)
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	45.5 mt dw (100,317 lb dw).	69.9 mt dw (154,077 lb dw).	– 5.3 mt dw (– 11,612 lb dw) ⁴ .	112.6 mt dw (248,215 lb dw).	107.3 mt dw (236,603 lb dw)
Atlantic	Aggregated Large Coastal Sharks.	168.9 mt dw (372,552 lb dw).	90.1 mt dw (198,651 lb dw).	.....	168.9 mt dw (372,552 lb dw).	168.9 mt dw (372,552 lb dw)
	Hammerhead Sharks.	27.1 mt dw (59,736 lb dw).	8.5 mt dw (18,703 lb dw).	.....	27.1 mt dw (59,736 lb dw).	27.1 mt dw (59,736 lb dw)
	Non-Blacknose Small Coastal Sharks.	176.1 mt dw (388,222 lb dw).	106.2 mt dw (234,170 lb dw).	.....	264.1 mt dw (582,333 lb dw).	264.1 mt dw (582,333 lb dw)
	Blacknose Sharks (South of 34° N. lat. only).	17.5 mt dw (38,638 lb dw).	20.5 mt dw (45,109 lb dw).	– 1.5 mt dw (– 3,268 lb dw) ⁵ .	17.2 mt dw (37,921 lb dw).	15.7 mt dw (34,653 lb dw)
No regional quotas	Non-Sandbar LCS Research.	50.0 mt dw (110,230 lb dw).	18.1 mt dw (39,830 lb dw).	.....	50.0 mt dw (110,230 lb dw).	50.0 mt dw (110,230 lb dw)
	Sandbar Shark Research.	116.6 mt dw (257,056 lb dw).	63.6 mt dw (140,258 lb dw).	.....	90.7 mt dw (199,943 lb dw).	90.7 mt dw (199,943 lb dw)
	Blue Sharks	273.0 mt dw (601,856 lb dw).	0.5 mt dw (1,114 lb dw).	.....	273.0 mt dw (601,856 lb dw).	273.0 mt dw (601,856 lb dw)
	Porbeagle Sharks	0 mt dw (0 lb dw)	0 mt dw (0 lb dw)	.....	1.7 mt dw (3,748 lb dw).	1.7 mt dw (3,748 lb dw)
	Pelagic Sharks Other Than Porbeagle or Blue.	488.0 mt dw (1,075,856 lb dw).	71.3 mt dw (157,099 lb dw).	.....	488.0 mt dw (1,075,856 lb dw).	488.0 mt dw (1,075,856 lb dw)

¹ Landings are from January 1, 2015, through October 16, 2015, and are subject to change.² The blacktip, aggregated LCS, and hammerhead shark management group preliminary 2015 landings were split based on the sub-regional quota percentage splits established in Amendment 6 to the 2006 Consolidated HMS FMP.³ This adjustment accounts for underharvest in 2014 and 2015. In the final rule establishing the 2015 quotas (79 FR 71331; December 2, 2014), the 2014 Gulf of Mexico blacktip shark quota was underharvested by 72.0 mt dw (158,602 lb dw). After the final rule establishing the 2015 quotas published, late dealer reports indicated the quota was underharvested by an additional 1.4 mt dw (3,142 lb dw), for a total underharvest of 73.4 mt dw (161,744 lb dw). In 2015, the Gulf of Mexico blacktip shark quota was underharvested by 37.4 mt dw (82,373 lb dw). Therefore, this final rule increases the Gulf of Mexico blacktip shark quota by 38.8 mt dw (37.4 mt dw underharvest in 2015 + 1.4 mt dw underharvest from 2014). Recently, NMFS implemented Amendment 6 to the 2006 Consolidated HMS FMP which, among other things, established sub-regional quotas for the Gulf of Mexico blacktip shark management group. NMFS will account for underharvest based on the sub-regional quota percentage split. Thus, the eastern Gulf of Mexico blacktip shark quota is increased by 3.8 mt dw, or 9.8 percent of the underharvest, while the western Gulf of Mexico blacktip shark quota is increased by 35.0 mt dw, or 90.2 percent of the underharvest.⁴ This adjustment accounts for overharvests from 2014. In the final rule establishing the 2015 quotas (79 FR 71331; December 2, 2014), the 2014 Gulf of Mexico non-blacknose SCS quota was not overharvested. After the final rule establishing the 2015 quotas published, late dealer reports indicated the quota was overharvested by 5.3 mt dw (11,612 lb dw) due to landings by state-water fishermen fishing in state-waters after the federal closure. NMFS will decrease the 2016 base annual quota based on the overharvest estimate of 5.3 mt from 2014. Based on the original 2015 annual commercial quota, the 2015 annual quota was overharvested by 7.8 mt dw (17,184 lb dw) as of October 16, 2015. In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS increased the commercial Gulf of Mexico non-blacknose SCS quota to 112.6 mt dw (248,215 lb dw) and re-opened the fishery. Based on the revised annual commercial quota, reported landings have not exceeded the revised 2015 base quota to date.⁵ This adjustment accounts for overharvest in 2012 and 2015. After the final rule establishing the 2012 quotas published, late dealer reports indicated the blacknose shark quota was overharvested by 3.5 mt dw (7,742 lb dw). In the final rule establishing the 2014 quotas, NMFS implemented a 5-year adjustment of the overharvest amount by the percentage of landings in 2012. Thus, NMFS will reduce the Atlantic blacknose sharks by 0.5 mt dw (1,111 lb dw) each year for 5 years from 2014–2018. In 2015, the Atlantic blacknose shark quota was overharvested by 3.0 (6,471 lb dw). NMFS is implementing an additional 3-year adjustment of the overharvest amount in 2015. NMFS will reduce the quota by 1.0 mt dw (2,157 lb dw) each year from 2016–2018. Therefore, this final rule decreases the Atlantic blacknose shark quota by 1.5 mt dw (1.0 mt dw overharvest in 2015 + 0.5 mt dw overharvest from 2012).

Fishing Season Notification for the 2016 Atlantic Commercial Shark Fishing Seasons

Based on the seven “opening commercial fishing season” criteria listed in § 635.27(b)(3), NMFS is opening all the 2016 Atlantic commercial shark fishing seasons on January 1, 2016 (Table 2).

Regarding the LCS retention limit, as shown in Table 2, for directed shark limited access permit holders, the Gulf of Mexico blacktip shark, aggregated LCS, and hammerhead shark

management groups will start the commercial fishing season at 45 LCS other than sandbar sharks per vessel per trip, and the Atlantic aggregated LCS and hammerhead shark management groups will start the commercial fishing season at 36 LCS other than sandbar sharks per vessel per trip. In the Atlantic region, as described above, NMFS will closely monitor the quota at the beginning of the year. If it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region an opportunity to fish

(e.g., if approximately 20 percent of the quota is caught at the beginning of the year), NMFS will reduce the commercial retention limit, then raise it later in the season. Based on prior years’ fishing activity, to allow greater fishing opportunities later in the year, NMFS anticipates raising the commercial retention limit to the default limit of 45 LCS other than sandbar sharks per vessel per trip around July 15, 2016. However, any retention limit reductions and increases will be based on consideration of the trip limit

adjustment criteria at 50 CFR 635.24(a)(8).

All of the shark management groups will remain open until December 31, 2016, or until NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota; however, consistent with § 635.28(b)(5), NMFS may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80

percent of the quota. Additionally, NMFS has established non-linked and linked quotas; linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from exceeding the total allowable catch. The linked and non-linked quotas are shown in Table 2. NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management

group including any linked quotas, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

TABLE 2—QUOTA LINKAGES, SEASON OPENING DATES, AND COMMERCIAL RETENTION LIMIT BY REGIONAL OR SUB-REGIONAL SHARK MANAGEMENT GROUP

Region or sub-region	Management group	Quota linkages	Season opening dates	Commercial retention limits for directed shark limited access permit holders (inseason adjustments are available)
Eastern Gulf of Mexico ..	Blacktip Sharks	Not Linked	January 1, 2016	45 LCS other than sandbar sharks per vessel per trip.
	Aggregated Large Coastal Sharks.	Linked		
	Hammerhead Sharks			
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2016	45 LCS other than sandbar sharks per vessel per trip.
	Aggregated Large Coastal Sharks.	Linked		
	Hammerhead Sharks			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	Not Linked	January 1, 2016	N/A
Atlantic	Aggregated Large Coastal Sharks.	Linked	January 1, 2016	36 LCS other than sandbar sharks per vessel per trip [If quota is landed quickly (e.g., if approximately 20 percent of quota is caught at the beginning of the year), NMFS anticipates an inseason reduction (e.g., to 3 or fewer LCS other than sandbar sharks per vessel per trip), then an inseason increase to 45 LCS other than sandbar sharks per vessel per trip around July 15, 2016].
	Hammerhead Sharks			
	Non-Blacknose Small Coastal Sharks.	Linked (South of 34° N. lat. only).	January 1, 2016	N/A
	Blacknose Sharks (South of 34° N. lat. only)			
No regional quotas	Non-Sandbar LCS Research.	Linked	January 1, 2016	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2016	N/A
	Porbeagle Sharks			
	Pelagic Sharks Other Than Porbeagle or Blue			

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the adjustments to the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, and blacknose

shark management group quotas based on over- and/or underharvests from the previous fishing season(s). The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

Section 604(a)(1) of the RFA requires an explanation of the purpose of the rulemaking. The purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to establish the 2016 Atlantic commercial shark fishing quotas and fishing seasons. Without this rule, the Atlantic commercial shark

fisheries would close on December 31, 2015, and would not open until another action was taken. This final rule will be implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could also be positive effects for other fishermen in the region. The opening dates were chosen to allow for an

equitable distribution of the available quotas among all fishermen across regions and states, to the extent practicable.

Section 604(a)(2) of the RFA requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), provide a summary of NMFS' assessment of such issues, and provide a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2016 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA. However, NMFS received comments related to the overall economic impacts of the proposed rule, and those comments and NMFS' assessment of and response to them are summarized above (see Comments 1 and 3 above). As described in the responses to those comments relating to the season opening dates, consistent with § 635.27(b)(3), the opening date for the all of the commercial shark fisheries will be implemented as proposed (January 1, 2016).

Section 604(a)(4) of the RFA requires NMFS to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. The SBA size standards are \$20.5 million for finfish fishing, \$5.5 million for shellfish fishing, and \$7.5 million for other marine fishing, for-hire businesses, and marinas (79 FR 33647; June 12, 2014). NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$20.5 million for finfish-harvesting. The commercial shark fisheries are comprised of fishermen who hold shark directed or incidental limited access permits and the related shark dealers, all of which NMFS considers to be small entities according to the size standards set by the SBA. This final rule applies to the approximately 210 directed commercial shark permit holders (124 in the Atlantic and 86 in the Gulf of Mexico regions), 253 incidental commercial shark permit holders (153 in the Atlantic and 100 in the Gulf of Mexico regions), and 100 commercial shark dealers (71 in the Atlantic and 29 in the Gulf of Mexico regions) as of October 2015.

Section 604(a)(5) of the RFA requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject

to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments.

Section 604(a)(6) of the RFA requires NMFS to describe the steps taken to minimize the economic impact on small entities, consistent with the stated objectives of applicable statutes. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the rule on small entities. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) for the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this rulemaking, NMFS adjusted the base quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest, as specified and allowable in existing regulations. Under current regulations (§ 635.27(b)(2)), all shark fisheries close

on December 31 of each year, or when NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota, and do not open until NMFS takes action, such as this rulemaking to re-open the fisheries. Thus, not implementing these management measures would negatively affect shark fishermen and related small entities, such as dealers, and also would not provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Based on the 2014 ex-vessel price, fully harvesting the unadjusted 2016 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$4,583,514 (see Table 3). For the Gulf of Mexico blacktip shark management group, NMFS has increased the baseline sub-regional quotas due to the underharvests in 2015. The increase for the eastern Gulf of Mexico blacktip shark management group could result in a \$8,397 gain in total revenues for fishermen in that sub-region, while the increase for the western Gulf of Mexico blacktip shark management group could result in a \$77,289 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico non-blacknose SCS management group, NMFS has reduced the baseline quota due to the overharvest in 2014. This will cause a potential loss in revenue of \$7,571 for the fleet in the Gulf of Mexico region. For the Atlantic blacknose shark management group, NMFS will continue to reduce the baseline quota through 2018 to account for overharvest in 2012 and will reduce the baseline quota for the next 3 years to account for overharvest in 2015. These reductions will cause a potential loss in revenue of \$3,203 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and considering the potential economic impacts of adjusting the quotas for under- and overharvests at that time.

TABLE 3—AVERAGE EX-VESSEL PRICES PER LB DW FOR EACH SHARK MANAGEMENT GROUP, 2014

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
Gulf of Mexico	Blacktip Shark	\$0.50	\$9.53
	Aggregated LCS	0.54	10.04
	Hammerhead Shark	0.48	10.21
	Non-Blacknose SCS	0.36	5.84
	Blacknose Shark	0.86	5.84
Atlantic	Aggregated LCS	0.75	4.19
	Hammerhead Shark	0.57	2.33
	Non-Blacknose SCS	0.74	4.00
	Blacknose Shark	0.78	4.00
	Shark Research Fishery (Aggregated LCS)	0.58	7.68
No Region	Shark Research Fishery (Sandbar only)	0.69	10.12
	Blue shark	0.67	2.34
	Porbeagle shark	1.41	2.34
	Other Pelagic sharks	1.41	2.34

For this final rule, NMFS reviewed the “opening commercial fishing season” criteria at § 635.27(b)(3)(i) through (vii) to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. Over- and/or underharvests of 2015 and previous fishing season quotas were examined for the different species/complexes to determine the effects of the 2016 final quotas on fishermen across regional fishing areas. The potential season lengths and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, NMFS examined the seasonal variation of the different species/complexes and the effects on fishing opportunities. In addition to these criteria, NMFS also considered other relevant factors, such as recent landings data and public comments, before arriving at the final opening dates for the 2016 Atlantic shark management groups. For the 2016 fishing season, NMFS is opening all of the shark management groups on January 1, 2016. The direct and indirect economic impacts will be neutral on a short- and long-term basis for the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, Gulf of Mexico non-blacknose shark SCS, Atlantic non-blacknose shark SCS, Atlantic blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, because NMFS did not change the opening dates of these fisheries from the status quo.

Opening the aggregated LCS and hammerhead shark management groups in the Atlantic region on January 1 will result in short-term, direct, moderate, beneficial economic impacts, as

fishermen and dealers in the southern portion of the Atlantic region will be able to fish for and sell aggregated LCS and hammerhead sharks starting in January. These fishermen will be able to fish earlier in the 2016 fishing season compared to the 2010, 2011, 2012, 2014, and 2015 fishing seasons, which did not start until June or July. Based on public comment, some Atlantic fishermen in the southern and northern part of the region prefer a January 1 opening for the fishery as long as the majority of the quota is available later in the year. With the implementation of the HMS electronic reporting system in 2013, NMFS now monitors the quota on a more real-time basis compared to the paper reporting system that was in place before 2013. This ability, along with the inseason retention limit adjustment criteria in § 635.24(a)(8), should allow NMFS the flexibility to further provide equitable fishing opportunities for fishermen across all regions, to the extent practicable. Depending on how quickly the quota is being harvested, NMFS will reduce the retention limits to ensure that fishermen farther north have sufficient quota for a fishery later in the 2016 fishing season. The direct impacts to shark fishermen in the Atlantic region of reducing the trip limit depend on the needed reduction in the trip limit and the timing of such a reduction. Therefore, such a reduction in the trip limit for directed shark limited access permit holders is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the northern portion of the Atlantic region, a January 1 opening for the aggregated LCS and hammerhead shark management groups, with inseason trip limit adjustments to ensure quota is

available later in the season, will have direct, minor, beneficial economic impacts in the short-term for fishermen as they will potentially have access to the aggregated LCS and hammerhead shark quotas earlier than in past seasons. Fishermen in this area have stated that, depending on the weather, some aggregated LCS species might be available to retain in January. Thus, fishermen will be able to target or retain aggregated LCS while targeting non-blacknose SCS. There will be indirect, minor, beneficial economic impacts in the short- and long-term for shark dealers and other entities that deal with shark products in this region as they will also have access to aggregated LCS products earlier than in past seasons. Thus, opening the aggregated LCS and hammerhead shark management groups in January and using inseason trip limit adjustments to ensure the fishery is open later in the year in 2016 will cause beneficial cumulative economic impacts, because it allows for a more equitable distribution of the quotas among constituents in this region, consistent with the 2006 Consolidated HMS FMP and its amendments.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a brochure summarizing fishery information and regulations for Atlantic shark fisheries for 2016. This brochure also serves as the small entity

compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: November 20, 2015.

Samuel D. Rauch III,

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

[FR Doc. 2015–30032 Filed 11–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140117052–4402–02]

RIN 0648–XE321

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a

portion of its 2015 commercial Atlantic bluefish quota to the State of New York. These quota adjustments are necessary to comply with the Bluefish Fishery Management Plan quota transfer provision. This announcement is intended to inform the public of the revised commercial quota for each state involved.

DATES: Effective November 30, 2015, through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, 978–281–9112.

SUPPLEMENTARY INFORMATION:

Regulations governing the bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan, which was published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for bluefish quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or

combine bluefish commercial quota under § 648.162(e). The Regional Administrator is required to consider the criteria in § 648.162(e)(1) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 250,000 lb (113,398 kg) of its 2015 commercial quota to New York. This transfer was prompted by state officials in New York to address an overage of its commercial bluefish quota and to provide sufficient quota to allow the fishery to remain open. The Regional Administrator has determined that the criteria set forth in § 648.162(e)(1) have been met. The revised bluefish quotas for calendar year 2015 are: North Carolina, 1,139,371 lb (512,727 kg); and New York, 1,094,304 lb (496,367 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–30447 Filed 11–30–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 80, No. 230

Tuesday, December 1, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–113; NRC–2015–0230]

Uninterruptible Monitoring of Coolant and Fuel in Reactors and Spent Fuel Pools

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking (PRM) requesting that the NRC amend its “Domestic licensing of production and utilization facilities” regulations to require “installation of ex-vessel instrumentation for uninterrupted monitoring of coolant and fuel in reactors and spent-fuel pools.” The petition, dated September 10, 2015, was submitted by Dr. Alexander DeVolpi (the petitioner). The petition was docketed by the NRC on September 21, 2015, and was assigned Docket Number PRM–50–113. The NRC is examining the issues raised in this petition to determine whether they should be considered in rulemaking. The NRC is not requesting public comment on PRM–50–113 at this time.

DATES: The PRM is available on December 1, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0230 when contacting the NRC about the availability of information for this petition. You may obtain publicly-available information related to this petition by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0230. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Jennifer Tobin, Office of Nuclear Reactor Regulation, telephone: 301–415–2328, email: Jennifer.Tobin@nrc.gov. For questions related to the petition for rulemaking process contact Anthony de Jesús, Office of Administration, telephone: 301–415–1106, email: Anthony.deJesus@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. The Petitioner

The petitioner, Dr. Alexander DeVolpi, states that he “has had a substantial technical career starting in the late 1950s in reactor safety and engineering, having worked for and been funded by U.S. nuclear development and regulatory agencies.” The petitioner notes that he has carried out relevant research and development and published supportive technical papers and filed patent applications.

II. The Petition

The petitioner requests that the NRC amend part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic licensing of production and utilization facilities,” to require “installation of ex-vessel instrumentation for uninterrupted

monitoring of coolant and fuel in reactors and spent-fuel pools.” The petition is available in ADAMS under Package Accession No. ML15264A857.

III. Discussion of the Petition

The petitioner requests that the NRC amend its regulations in 10 CFR part 50 to require “installation of ex-vessel instrumentation for uninterrupted monitoring of coolant and fuel in reactors and spent-fuel pools.” The petitioner cites a 2014 National Research Council report titled, “Lessons Learned from the Fukushima Nuclear Accident for Improving Safety of U.S. Nuclear Plants,” that gave high priority to recommendation 5.1A, which stated that greater “[a]ttention to availability, reliability, redundancy, and diversity of plant systems and equipment is specifically needed for . . . Instrumentation for monitoring critical thermodynamic parameters in reactors, containments, and spent fuel pools.”¹ In addition, the petitioner cites to section 5.1.1.4 of the report, “Instrumentation for Monitoring Critical Thermodynamic Parameters,” which states that “robust and diverse monitoring instrumentation that can withstand severe accident conditions is essential for diagnosing problems, selecting and implementing accident mitigation strategies, and monitoring their effectiveness.”

The petitioner claims that requiring the “installation of ex-vessel instrumentation for uninterrupted monitoring of coolant and fuel in reactors and spent-fuel pools” might prevent or mitigate potential accidents at reactors and spent fuel pools. The petitioner asserts that the Three Mile Island accident “might have been prevented if realtime uninterrupted ex-vessel reactor water-level monitoring had been in place.” Furthermore, the petitioner notes that one or both of the Fukushima meltdowns “might have been delayed or averted if uninterrupted ex-vessel real-time reactor water-level monitoring had been in place and operating on self-contained low-current battery supplies.” The petitioner states that ex-vessel instrumentation “would provide autonomous and redundant

¹ The report can be accessed at <http://www.nap.edu/catalog/18294/lessons-learned-from-the-fukushima-nuclear-accident-for-improving-safety-of-us-nuclear-plants>.

measurements of reactor water level and density at all times, irrespective of power level.” The petitioner asserts that amending the NRC’s regulations to require ex-vessel instrumentation would be “[c]onsistent with a more anticipatory defense-in-depth strategy” and would enhance strategies to mitigate beyond-design-basis accidents. In addition, the petitioner suggests that requiring ex-vessel instrumentation would “reduce potential financial risk and public apprehension” and that ex-vessel monitoring could “supply routine operational nuclear-process information that might enhance fuel-consumption efficiency.” Finally, the petitioner notes that ex-vessel instrumentation could be “designed to be functional and capable of providing data on fuel relocation” after a reactor shutdown and could “monitor post-accident reactor fuel reconcentration over a period of many years.”

VI. Conclusion

The NRC has determined that the petition meets the threshold sufficiency requirements for docketing a petition for rulemaking under 10 CFR 2.802, “Petition for rulemaking,” and the petition has been docketed as PRM–50–113. The NRC will examine the issues raised in PRM–50–113 to determine whether they should be considered in the rulemaking process.

Dated at Rockville, Maryland, this 23rd day of November, 2015.

For the Nuclear Regulatory Commission,
Annette L. Vietti-Cook,
Secretary of the Commission.

[FR Doc. 2015–30355 Filed 11–30–15; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Regulation WW; Docket No. 1525]

RIN 7100 AE–39

Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies To Meet the Liquidity Coverage Ratio Requirements

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Board invites public comment on a proposed rule that would implement public disclosure requirements regarding the liquidity coverage ratio (LCR) of large, internationally active banking

organizations and certain smaller, less complex banking organizations. The proposed rule would apply to all depository institution holding companies and covered nonbank companies that are required to calculate the LCR (covered companies). A covered company would be required to publicly disclose on a quarterly basis quantitative information about its LCR calculation, as well as a discussion of certain features of its LCR results. The proposed rule also would amend the LCR Rule to provide a full year for certain companies to come into compliance.

DATES: Comments on this notice of proposed rulemaking must be received by February 2, 2016.

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–1525, RIN 7100 AE 39, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Robert de V. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board’s Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Street NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn Collins, Assistant Director, (202) 912–4311, Peter Clifford, Manager, (202) 785–6057, Adam S. Trost, Senior Supervisory Financial Analyst, (202) 452–3814, J. Kevin Littler, Senior Supervisory Financial Analyst, (202) 475–6677, SoRelle Peat, Financial

Analyst, (202) 452–2543, Risk Policy, Division of Banking Supervision and Regulation; Dafina Stewart, Counsel, (202) 452–3876, or Adam Cohen, Counsel, (202) 912–4658, 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.

SUPPLEMENTARY INFORMATION:

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I. Overview of Proposed Rule

A. LCR Rule

On September 3, 2014, the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, the agencies) adopted a final rule (LCR Rule) to implement a quantitative liquidity requirement, the liquidity coverage ratio¹ (LCR), for certain companies. The LCR is designed to promote the short-term resilience of the liquidity risk profile of large and internationally active banking organizations, thereby improving the financial sector’s ability to absorb shocks arising from financial and economic stress, and to further improve the measurement and management of liquidity risk. The LCR Rule requires a company subject to the rule to maintain an amount of high-quality liquid assets (HQLA) (the numerator of the ratio)² that is no less than 100 percent of its total net cash outflows over a

¹ 79 FR 61440 (October 10, 2014). The LCR is consistent with the liquidity coverage ratio standard established by the Basel Committee on Banking Supervision (Basel III Liquidity Framework). See Basel Committee on Banking Supervision, “Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools” (January 2013), available at <http://www.bis.org/publ/bcb3238.htm>.

² A company’s HQLA amount is calculated according to 12 CFR 249.21.

prospective 30 calendar-day period of stress (the denominator of the ratio).³

The LCR Rule applies to large and internationally active banking organizations, generally, (1) bank holding companies, certain savings and loan holding companies, and depository institutions that, in each case, have \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance sheet foreign exposure; (2) depository institutions with \$10 billion or more in total consolidated assets that are consolidated subsidiaries of such bank holding companies and savings and loan holding companies; and (3) nonbank financial companies designated by the Financial Stability Oversight Council for Board supervision to which the Board has applied the LCR Rule by rule or order. The LCR Rule also applies, via a final rule adopted by the Board (modified LCR Rule) that implemented a modified LCR requirement (modified LCR), to bank holding companies and certain savings and loan holding companies that, in each case, have \$50 billion or more in total consolidated assets but that do not meet the threshold for large and internationally active firms (modified LCR holding companies). Community banking organizations are not subject to the LCR Rule.

B. Proposed LCR Disclosure Requirements

One of the key lessons of the recent financial crisis was that market participants did not have adequate access to information about the liquidity risk profiles of large banking organizations. In the Supplementary Information to the LCR Rule, the agencies indicated their plans to seek comment on “instructions pertaining to a covered company’s disclosure of the final rule’s LCR.”⁴ Such public disclosures would facilitate transparency and help to promote market discipline by providing investors and other stakeholders with comparable information about the liquidity risk profiles of those companies.

The proposed rule would apply to the following companies subject to the LCR Rule: (1) All bank holding companies and certain savings and loan holding companies that, in each case, have \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance sheet foreign exposure; (2) nonbank financial companies designated by the Financial Stability Oversight Council for Board supervision

to which the Board has applied the LCR Rule by rule or order (covered nonbank company);⁵ and (3) modified LCR holding companies (collectively, covered companies). The proposed rule would not apply to depository institutions.

The proposed rule would require a covered company to publicly disclose information about certain components of its LCR calculation in a standardized tabular format (LCR disclosure template) and discuss certain features of its LCR results.⁶ Under the proposed rule, a covered company would be required to provide timely public disclosures, including the LCR disclosure template, each calendar quarter in a direct and prominent manner on its public internet site or in a public financial or other public regulatory report. Such disclosures would need to remain available to the public for at least five years from the time of initial disclosure.⁷

Each of the proposed disclosure requirements is designed to highlight important aspects of a covered company’s liquidity position. Public disclosure of information about covered company LCR calculations would help market participants and other parties consistently assess the liquidity risk profile of covered companies. In designing the proposed disclosure

requirements, the Board has considered the burden of the proposed disclosures relative to the public interest served by requiring their disclosure. All the required quantitative disclosures reflect data that covered companies are already required to compute under the LCR Rule. Moreover, the disclosure requirements for a discussion of certain features of covered companies’ LCR results largely reflect information that covered companies already should have prepared to meet the liquidity risk management standards and practices required by the agencies through other applicable liquidity regulations and described in guidance. The Board invites comment on all aspects of the proposed rule, including what changes, if any, could improve the clarity and utility of the disclosure.

II. Quantitative Disclosure Requirements

As noted above, under the proposed rule, a covered company would be required to publicly disclose certain components of its LCR calculation in a standardized tabular format. The proposed standardized tabular format will help market participants compare the LCRs of covered companies across the U.S. banking industry and international jurisdictions.

The proposed LCR disclosure template is similar to a common disclosure template developed by the BCBS; however as discussed in more detail in sections II.A through II.D of this Supplementary Information, the proposed rule reflects differences between the LCR Rule and the Basel III Liquidity Framework.

The proposed rule includes a number of requirements designed to help ensure the comparability of data across companies. Under the proposed rule, a covered company would be required to calculate all disclosed amounts as simple averages of the components used to calculate its daily LCR over a quarterly reporting period, except that modified LCR holding companies would be required to calculate all disclosed amounts as simple averages of the components used to calculate their monthly modified LCR. In addition, a covered company would be required to calculate all disclosed amounts on a consolidated basis; express the results in millions of U.S. dollars or as a percentage, as applicable; and clearly indicate the date range covered by the disclosure by indicating the beginning and end-date of the reporting period on the LCR disclosure template. The proposed rule would require a covered company to disclose both average unweighted amounts and average

⁵ At this time, General Electric Capital Corporation is the only nonbank financial company designated by the Financial Stability Oversight Council for Board supervision to which the Board has applied the LCR Rule. See 80 FR 4411 (July 24, 2015).

⁶ The Basel Committee on Banking Supervision (BCBS) published liquidity coverage ratio disclosure standards in January 2014 and revised the standards in March 2014 (BCBS disclosure standards). Basel Committee on Banking Supervision, “Liquidity coverage ratio disclosure standards” (March 2014), available at <http://www.bis.org/publ/bcbst272.htm>. The BCBS disclosure standards include a common disclosure template (BCBS common template) intended to improve the transparency of regulatory liquidity requirements, enhance market discipline, and reduce uncertainty in the markets. This proposed rule would implement public disclosure requirements that are consistent with the BCBS disclosure standards and the BCBS common template with some modifications to require more granularity and to reflect ways in which the LCR Rule differs from the BCBS standard. The differences between the proposed rule and the BCBS disclosure standards relate primarily to the enhancements implemented in the LCR Rule. The disclosure requirements contained in the proposed rule generally will ensure comparability of components of the liquidity coverage ratio calculations on an international basis.

⁷ Although the proposed rule would apply only to covered companies, in the future the Board, along with the other agencies, may develop a different or modified reporting form that would be required for both covered companies and depository institutions subject to the LCR Rule. The Board anticipates that it would solicit public comment on any such new reporting form.

³ A company’s total net cash outflows is calculated according to 12 CFR 249.30 or 249.63.

⁴ 79 FR 61440, 61445 (October 10, 2014).

weighted amounts for the covered company's HQLA, cash outflow amounts, and cash inflow amounts. The proposed rule includes cross-references to the applicable sections of the LCR Rule and to each numbered row of the proposed LCR disclosure template.

1. What, if any, unintended consequences might result from a covered company publicly disclosing its LCR and the components used to calculate its LCR, specifically in terms of liquidity risk?

A. Disclosure of Eligible HQLA

The proposed rule, like the BCBS common template, would require a covered company to disclose its average eligible HQLA.⁸ In addition, the proposed rule would require disclosure of the average amounts of a covered company's eligible HQLA that qualify as eligible level 1, level 2A, and level 2B liquid assets to assist market participants and other parties to assess the quality and composition of a covered company's HQLA amount.⁹

The proposed rule would require the disclosure of both average unweighted amounts and average weighted amounts of eligible HQLA and each of its component levels of assets (*i.e.*, level 1, level 2A, and level 2B liquid assets). The average unweighted amounts would be calculated prior to applying the haircuts required under 12 CFR 249.21(b) to the asset amounts. The average weighted amounts would be calculated after applying the haircuts required under 12 CFR 249.21(b) to the asset amounts.

B. Disclosure of Cash Outflows

The proposed rule would require a covered company to disclose its cash outflows, including both the average unweighted amounts and average weighted amounts. This information is important to understand the ongoing funding risks facing a firm, and in particular, potential sources of strain during a 30 calendar-day period of market volatility. The average unweighted amounts of cash outflows would be calculated prior to applying the outflow rates specified in 12 CFR 249.32. The average weighted amounts of cash outflows would be calculated after the application of the outflow rates specified in 12 CFR 249.32.

The proposed disclosure requirements for cash outflows are consistent with the BCBS common template, with a few modifications. First, the proposed rule adjusts some of the cash outflow

category titles from those in the BCBS common template for consistency with the terminology used in the LCR Rule. For example, the proposed rule would have an outflow title that includes "unconsolidated structured transactions" and "mortgage commitments" because those items are separate outflow provisions in the LCR Rule.

Second, in the Supplementary Information section of the LCR Rule, the agencies explained that certain types of retail brokered deposits could result in greater liquidity risks and, as a result, the LCR Rule provides outflow rates tailored to these types of retail brokered deposits in 12 CFR 249.32(g).¹⁰ Given the LCR Rule's treatment of retail brokered deposits, the proposed rule would require the unweighted and weighted average amounts of cash outflows from retail brokered deposits to be disclosed separately from other retail deposits.

Third, the proposed rule would require disclosure of both the average unweighted and average weighted amounts of secured wholesale funding (*e.g.*, repurchase agreements) and asset exchange outflows as specified in 12 CFR 249.32(j). Although the BCBS common template includes only disclosure of the weighted amount of secured wholesale funding, disclosure of the average unweighted value will allow market participants and other parties to better understand the composition of assets supporting these types of transactions.

C. Disclosure of Cash Inflows

The proposed rule would require a covered company to disclose its cash inflows, including both average unweighted amounts and average weighted amounts. As with information regarding cash outflows, information regarding cash inflows is important to understand the ongoing funding risks facing a firm. Similar to the requirements for cash outflows, the average unweighted amounts of cash inflows would be calculated prior to applying the inflow rates specified in 12 CFR 249.33. The average weighted amounts of cash inflows would be calculated after the application of the inflow rates specified in 12 CFR 249.33.

The proposed disclosure requirements for cash inflows are similar to the BCBS common template, with a few modifications. As with outflows, the proposed rule adjusts some of the cash inflow category titles from those used in the BCBS common template to make the terminology consistent with the LCR

Rule and to disaggregate certain categories. For instance, the proposed rule would require "net derivative cash inflow," "securities cash inflow," "broker-dealer segregated account inflow," and "other cash inflow" amounts each to be disclosed separately. In contrast, these inflow amounts are aggregated in the BCBS common template.

D. Disclosure of HQLA Amount, Total Net Cash Outflow Amount, Maturity Mismatch Add-on, and Liquidity Coverage Ratio

The proposed rule would require a covered company to disclose its average HQLA amount, average total net cash outflow amount, and the average LCR as measured over the quarterly reporting period. A covered company's HQLA amount and total net cash outflow amount are the numerator and the denominator of the LCR, respectively, and thus, are important to help market participants and other parties understand the liquidity risk profile of a covered company and compare profiles across companies.

A covered company is required to calculate its HQLA amount pursuant to 12 CFR 249.21. The HQLA amount is equal to the covered company's eligible HQLA, minus the appropriate amount to comply with the caps on the inclusion of certain assets as specified in the LCR Rule.

A covered company is required to calculate its total net cash outflow amount pursuant to 12 CFR 249.30. In order to determine a covered company's total net cash outflow amount, the LCR Rule requires covered companies, except modified LCR holding companies, to calculate a maturity mismatch add-on under 12 CFR 249.30(b) to address liquidity risks posed by maturity mismatches between a covered company's outflows and inflows during the 30 calendar-day period.¹¹ To show the effect of the maturity mismatch add-on calculation on the total net cash outflow amount, the proposed rule would require separate disclosure of this calculation.

¹¹ In order to calculate the maturity mismatch add-on, a covered company first must identify the largest single-day maturity mismatch within the 30 calendar-day LCR period by calculating the daily difference in cumulative outflows and inflows that have set maturity dates, as specified by 12 CFR 249.31, within the 30 calendar-day period. The day with the largest difference reflects the net cumulative peak day. The covered company then must calculate the difference between that peak day amount and the net cumulative outflow amount on the last day of the 30 calendar-day period for those same outflow and inflow categories that have maturity dates within the 30 calendar-day period. This difference equals the maturity mismatch add-on.

⁸ Eligible HQLA are high-quality liquid assets that meet the requirements set forth in 12 CFR 249.22.

⁹ See 12 CFR 249.20 and 249.22.

¹⁰ See 79 FR 61440, 61490–61494.

Because a modified LCR holding company is not required to calculate a maturity mismatch add-on, these companies are not subject to the requirement to disclose the maturity mismatch add-on calculation.

Pursuant to § 249.63 of the modified LCR Rule (12 CFR 249.63) a modified LCR holding company is required to calculate its total net cash outflow by multiplying its net cash outflow by a factor of 0.7. Consistent with this calculation of the modified LCR, the proposed rule would require a modified LCR holding company to disclose its average cash outflows and inflows before applying the factor of 0.7, but to disclose its average total net cash outflow after applying the factor of 0.7.

Under the proposed rule, the average values disclosed for HQLA amount, total net cash outflow amount, and the LCR (rows 29, 32, and 33) may not equal the calculation of those values using component values reported in rows 1 through 28. This lack of equivalence is due to technical factors such as the application of the level 2 liquid asset caps, the total inflow cap, and for modified LCR holding companies, the application of the 0.7 factor to total net cash outflows. The application of the asset and inflow caps and modified LCR 0.7 factor may affect a covered company's LCR calculation in varying degrees across the calculation dates used to determine the average values that would be disclosed in rows 29, 32, and 33, and thus, would affect the averages for the HQLA amount, total net cash outflow amount, and the LCR. The proposed LCR disclosure template includes a footnote that would highlight this difference.

III. Qualitative Disclosure Requirements

The proposed rule would require a covered company to provide a discussion of certain features of its LCR results, which is consistent with the BCBS disclosure standards. The discussion of a covered company's LCR results will facilitate an understanding by market participants and other parties of the covered company's LCR and certain components used to calculate its LCR. A covered company's discussion of its LCR results may include, but does not have to be limited to, the following items: (1) The main drivers of the LCR results; (2) changes in the LCR results over time; (3) the composition of eligible HQLA; (4) concentration of funding sources; (5) derivative exposures and potential collateral calls; (6) currency mismatch in the LCR; (7) the covered company's centralized liquidity management function and its interaction

with other functional areas of the covered company; and (8) other inflows and outflows in the LCR that are not specifically identified by the required quantitative disclosures, but that the covered company considers to be relevant to facilitate an understanding of its liquidity risk profile. The proposed rule also would require that a covered company provide a brief discussion of any significant changes that occur such that current or previous quantitative disclosures are no longer reflective of a covered company's current liquidity risk profile.

IV. Frequency of Disclosure

The proposed rule would require a covered company to provide timely public disclosures after each calendar quarter. Disclosure on a quarterly basis is appropriate to meet the objectives of the public disclosure requirements by providing information that will help market participants and other parties assess the liquidity risk profiles of covered companies over the previous quarter while not destabilizing covered companies, which could occur with more frequent public disclosure such as daily disclosure. The Board acknowledges that the timing of disclosures under the federal banking laws may not always coincide with the timing of disclosures required under other federal law, including disclosures required under the federal securities laws and their implementing regulations by the Securities and Exchange Commission (SEC). For calendar quarters that do not correspond to a covered company's fiscal year-end, the Board would consider those disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the covered company's first reporting period in which it is subject to the proposed rule's disclosure requirements) as timely. In general, where a covered company's fiscal year-end coincides with the end of a calendar quarter, the Board considers disclosures to be timely if they are made no later than the applicable SEC disclosure deadline for the corresponding Form 10-K annual report. In cases where a covered company's fiscal year-end does not coincide with the end of a calendar quarter, the Board would consider the timeliness of disclosures on a case-by-case basis.

This approach to timely disclosures is consistent with the approach to public disclosures that the Board has taken in the context of other regulatory reporting and disclosure requirements. For example, the Board has used the same indicia of timeliness with respect to the

public disclosures required under its regulatory capital rules.¹²

2. Under what circumstances, if any, should the Board require more frequent or less frequent disclosures of a covered company's LCR and certain components used to calculate its LCR? What negative effects may result should the Board require a covered company to disclose qualitative or quantitative information about its LCR or certain components used to calculate its LCR with 30 days prior written notice?

V. Transition and Timing

For covered companies that currently are subject to the LCR Rule, the proposed effective dates for the proposed public disclosure requirements would differ based on the size, complexity, and potential systemic impact of those companies. The proposed rule would require covered companies that have \$700 billion or more in total consolidated assets or \$10 trillion or more in assets under custody and that are subject to the transition period in 12 CFR 249.50(a) to comply with the proposed public disclosure requirements beginning on July 1, 2016. Other covered companies (that are subject to the transition period in 12 CFR 249.50(b)) would be required to comply with the proposed public disclosure requirements on July 1, 2017. These proposed compliance dates would provide covered companies that are currently subject to the LCR Rule one year from the date that the covered companies are required to calculate their LCR on a daily basis to comply with the proposed public disclosure requirements. In addition, for modified LCR holding companies, the proposed rule would require the covered companies to comply with the public disclosure requirements on January 1, 2018. This proposed compliance date would provide modified LCR holding companies that are currently subject to the modified LCR Rule one year from the date that the modified LCR holding companies are required to calculate and maintain, on a monthly basis, an LCR equal to or greater than 1.0, to comply with the proposed public disclosure requirements.

For a covered company that becomes subject to the LCR Rule pursuant to 12 CFR 249.1(b)(2)(ii) after the effective date of the rule, the covered company would be required to make its first disclosures for the reporting period that starts on the date the company is required to begin to comply with the LCR Rule, which would be three months

¹² See 78 FR 62018, 62129 (October 11, 2013).

after the date that the covered company becomes subject to the LCR Rule under 12 CFR 249.1(b)(1). During the time such company is required to calculate the LCR monthly pursuant to 12 CFR 249.1(b)(2)(ii),¹³ the company would be required to calculate all disclosed amounts as simple averages of the components used to calculate its monthly LCR over a quarterly reporting period. For a modified LCR holding company that becomes subject to the modified LCR Rule pursuant to 12 CFR 249.60(c)(2)¹⁴ after the effective date of the modified LCR Rule, the proposed rule would require the company to comply with the public disclosure requirements 18 months after the date it becomes subject to the modified LCR Rule. For example, if a modified holding company becomes subject to the modified LCR Rule beginning in December 2016, the proposed rule would require that company to comply with public disclosure requirements beginning July 1, 2018.

VI. Amendment to the Modified LCR

For a modified LCR holding company that becomes subject to the modified LCR Rule after the rule's effective date, subpart G of the rule currently applies on the first day of the first quarter after which the company's total consolidated assets equal \$50 billion or more. This compliance date may not provide sufficient time for these companies to build the systems required to calculate the modified LCR. In light of this operational challenge, the Board proposes to amend the modified LCR Rule to provide these companies with a full year to come into compliance with the rule.

3. What, if any, particular operational challenges remain given the proposed one-year extension to the compliance date for modified LCR holding companies that become newly subject to the modified LCR Rule?

VII. Plain Language

Section 722 of the Gramm-Leach Bliley Act¹⁵ requires the Board to use plain language in all proposed and final rules published after January 1, 2000.

¹³ Under 12 CFR 249.1(b)(2)(ii), a covered company that becomes subject to the LCR Rule after the rule's effective date must calculate the LCR on a monthly basis from April 1 to December 31 of the year in which the covered company becomes subject to the LCR Rule, and thereafter the covered company must calculate the LCR on a daily basis.

¹⁴ As discussed in section VI below, the proposed rule provides that modified LCR holding companies that become subject to the modified LCR Rule after the rule's effective date will have a full year to comply with the rule.

¹⁵ Public Law 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809.

The Board invites your comments on how to make this proposal easier to understand. For example:

- Has the Board organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain 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 proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could the Board do to make the regulation easier to understand?

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act¹⁶ (RFA), requires an agency to either provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to \$550 million). In accordance with section 3(a) of the RFA, the Board is publishing an initial regulatory flexibility analysis with respect to the proposed rule. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

As discussed above, the proposed rule would establish a public disclosure requirement for the LCR applicable to all top-tier depository institution holding companies and nonbank financial companies required to calculate the LCR. The proposed rule would require a covered company to publicly disclose on a quarterly basis quantitative information about certain components of its LCR calculation in a standardized tabular format and a discussion of certain features of its LCR results.

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). As of June 30, 2015, there were approximately 628 small state member banks, 3,676 small bank holding companies, and 257 small savings and loan holding companies.

The proposed rule would not apply to “small entities” and would apply only to (1) bank holding companies and certain savings and loan holding companies that, in each case, have \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance sheet foreign exposure and (2) nonbank financial companies designated by the Financial Stability Oversight Council for Board supervision to which the Board has applied the LCR Rule by rule or order. The proposed rule also would apply to bank holding companies and certain savings and loan holding companies with \$50 billion or more in total consolidated assets, which are subject to the modified LCR Rule. Companies that are subject to the proposed rule therefore substantially exceed the \$550 million asset threshold at which a banking entity is considered a “small entity” under SBA regulations.

As noted above, because the proposed rule is not likely to apply to any company with assets of \$550 million or less, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. The Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed rule. 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 supervised 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.

IX. Paperwork Reduction Act

Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid

¹⁶ 5 U.S.C. 601 *et seq.*

Office of Management and Budget (OMB) control number. The Board's OMB control number is 7100-0367 and will be extended, with revision. The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The proposed rule contains requirements subject to the PRA. The disclosure requirements are found in §§ 249.66, 249.90, and 249.91.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

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

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

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

All comments will become a matter of public record. Commenters may submit comments on aspects of this notice that may affect burden estimates at the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW., Room 10235, Washington, DC 20503; by facsimile to 202-395-6974; or by email to oir_submission@omb.eop.gov. Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with the Liquidity Risk Measurement Standards (Regulation WW).

Frequency of Response: Event generated, quarterly.

Affected Public: Insured state member banks, bank holding companies, savings and loan holding companies, and nonbank financial companies supervised by the Board, and any subsidiary thereof.

Abstract: The proposed rule would require a depository institution holding company and nonbank financial company subject to the LCR (covered company) to publicly disclose information about certain components of its LCR calculation in a standardized

tabular format and include a discussion of certain features its LCR results. Public disclosure of information about covered company LCR calculations would help market participants and other parties consistently assess the liquidity risk profile of covered companies. Under the proposed rule, a covered company would be required to provide timely public disclosures each calendar quarter. A covered company would be required to include the completed disclosure template on its public internet site or in a public financial or other public regulatory report and make its disclosures available to the public for at least five years from the time of the initial disclosure.

A covered company must publicly disclose the information required under subpart J beginning on July 1, 2016, if the covered company is subject to the transition period under § 249.50(a) or July 1, 2017, if the covered company is subject to the transition period under § 249.50(b). For modified LCR holding companies, the proposed rule would require them to comply with the public disclosure requirements beginning on January 1, 2018.

Under the proposed rule, quantitative disclosures will convey information about a covered company's high-quality liquid assets and short-term cash flows, thereby providing insight into a covered company's liquidity risk profile. Consistent with the BCBS common template, the proposed rule would require a covered company to disclose both average unweighted amounts and average weighted amounts for the covered company's HQLA, cash outflow amounts, and cash inflow amounts. A covered company would also be required to calculate all disclosed amounts as simple averages of the components used to calculate its daily LCR over a quarterly reporting period, except that modified LCR holding companies would be required to calculate all disclosed amounts as simple averages of the components used to calculate their monthly modified LCR. A covered company would be required to calculate all disclosed amounts on a consolidated basis and express the results in millions of U.S. dollars or as a percentage, as applicable.

In addition, the proposed rule would require a covered company to provide a discussion of certain features of its LCR results. A covered company's qualitative discussion may include, but does not have to be limited to, the following items: (1) The main drivers of the LCR results; (2) changes in the LCR results over time; (3) the composition of eligible HQLA; (4) concentration of funding sources; (5) derivative exposures and

potential collateral calls; (6) currency mismatch in the LCR; (7) the covered company's centralized liquidity management function and its interaction with other functional areas of the covered company; and (8) other inflows and outflows in the LCR that are not specifically identified by the required quantitative disclosures, but that the covered company considers to be relevant to facilitate an understanding of its liquidity risk profile. The proposed rule also would require that a covered company provide a brief discussion of any significant changes that occur such that current or previous quantitative disclosures are no longer reflective of a covered company's current liquidity risk profile.

Estimated Paperwork Burden

Estimated Burden per Response: Reporting—0.25 hours; recordkeeping—10 hours and 100 hours; disclosure—24 hours.

Frequency: Reporting—monthly, quarterly, and annual; recordkeeping—annual; disclosure—quarterly.

Estimated Number of Respondents: 42.

Current Total Estimated Annual Burden: Reporting—13 hours; recordkeeping—1,140 hours.

Proposed Total Estimated Annual Burden: Reporting—13 hours; recordkeeping—1,140 hours; disclosure—4,032 hours.

List of Subjects in 12 CFR Part 249

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Liquidity; Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the Board proposes to amend part 249 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 1. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 2. Amend § 249.60 by revising paragraph (c)(2) to read as follows:

§ 249.60 Applicability.

* * * * *

(c) * * *

(2) A Board-regulated institution that first meets the threshold for applicability of this subpart under

paragraph (a) of this section after September 30, 2014, must comply with the requirements of this subpart one year after the date it meets the threshold set forth in paragraph (a).

* * * * *

■ 3. Add § 249.64 to subpart G to read as follows:

§ 249.64 Disclosures.

(a) Effective January 1, 2018, a covered depository institution holding company subject to this subpart must publicly disclose the information required under subpart J of this part each calendar quarter, except as provided in paragraph (b) of this section.

(b) Effective 18 months after a covered depository institution holding company first becomes subject to this subpart pursuant to § 249.60(c)(2), the covered depository institution holding company must provide the disclosures required under subpart J of this part each calendar quarter.

Subparts H and I [Reserved]

■ 4. Add reserved subparts H and I.

■ 5. Add subpart J, consisting of §§ 249.90 and 249.91, to read as follows:

Subpart J—Disclosures

Sec.

249.90 Timing, method and retention of disclosures.

249.91 Disclosure requirements.

§ 249.90 Timing, method and retention of disclosures.

(a) *Applicability.* A covered depository institution holding company or covered nonbank company that is subject to the minimum liquidity standards and other requirements of this part under § 249.1, must publicly disclose all the information required under this subpart.

(b) *Timing of disclosure.* (1) A covered depository institution holding company or covered nonbank company subject to this subpart must provide timely public disclosures each calendar quarter of all the information required under this subpart.

(2) A covered depository institution holding company or covered nonbank company subject to this subpart must provide the disclosures required by this subpart for the reporting period beginning on:

(i) July 1, 2016, and thereafter if the covered depository institution holding company is subject to the transition period under § 249.50(a); or

(ii) July 1, 2017, and thereafter if the covered depository institution holding company or covered nonbank holding company is subject to the transition period under § 249.50(b).

(3) A covered depository institution holding company or covered nonbank company that is subject to the minimum liquidity standard and other requirements of this part pursuant to § 249.1(b)(2)(ii), must provide the disclosures required by this subpart for the first reporting period beginning no later than the date they are first required comply with the requirements of this part pursuant to § 249.1(b)(2)(ii).

(c) *Disclosure method.* A covered depository institution holding company or covered nonbank company subject to this subpart must publicly disclose, in a direct and prominent manner, the information required under this subpart on its public internet site or in its public financial or other public regulatory reports.

(d) *Availability.* The disclosures provided under this subpart must remain publicly available for at least five years after the initial disclosure date.

§ 249.91 Disclosure requirements.

(a) *General.* A covered depository institution holding company or covered nonbank company subject to this subpart must publicly disclose the information required by paragraph (b) of this section in the format provided in the following table.

TABLE 1 TO § 249.91(A)—DISCLOSURE TEMPLATE

XX/XX/XXXX to YY/YY/YYYY In millions of U.S. Dollars	Average unweighted amount	Average weighted amount
HIGH-QUALITY LIQUID ASSETS		
1. Total eligible high-quality liquid assets (HQLA), of which:		
2. Eligible level 1 liquid assets.		
3. Eligible level 2A liquid assets.		
4. Eligible level 2B liquid assets.		
CASH OUTFLOW AMOUNTS		
5. Deposit outflow from retail customers and counterparties, of which:		
6. Stable retail deposit outflow.		
7. Other retail funding.		
8. Brokered deposit outflow.		
9. Unsecured wholesale funding outflow, of which:		
10. Operational deposit outflow.		
11. Non-operational funding outflow.		
12. Unsecured debt outflow.		
13. Secured wholesale funding and asset exchange outflow.		
14. Additional outflow requirements, of which:		
15. Outflow related to derivative exposures and other collateral requirements.		
16. Outflow related to credit and liquidity facilities including unconsolidated structured transactions and mortgage commitments.		
17. Other contractual funding obligation outflow.		
18. Other contingent funding obligations outflow.		
19. TOTAL CASH OUTFLOW.		
CASH INFLOW AMOUNTS		
20. Secured lending and asset exchange cash inflow.		
21. Retail cash inflow.		
22. Unsecured wholesale cash inflow.		

TABLE 1 TO § 249.91(A)—DISCLOSURE TEMPLATE—Continued

XX/XX/XXXX to YY/YY/YYYY In millions of U.S. Dollars	Average unweighted amount	Average weighted amount
23. Other cash inflows, of which:		
24. Net derivative cash inflow.		
25. Securities cash inflow.		
26. Broker-dealer segregated account inflow.		
27. Other cash inflow.		
28. TOTAL CASH INFLOW.		
Average amount ¹		
29. HQLA AMOUNT.		
30. TOTAL NET CASH OUTFLOW AMOUNT EXCLUDING THE MATURITY MISMATCH ADD-ON.		
31. MATURITY MISMATCH ADD-ON.		
32. TOTAL NET CASH OUTFLOW AMOUNT.		
33. LIQUIDITY COVERAGE RATIO (%).		

¹ The amounts reported in this column may not equal the calculation of those amounts using component amounts reported in rows 1–28 due to technical factors such as the application of the level 2 liquid asset caps, the total inflow cap, and for depository institution holding companies subject to subpart G of this part, the application of the modification to total net cash outflows.

(b) *Calculation of disclosed average amounts*—(1) *General*. (i) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate its disclosed average amounts:

(A) On a consolidated basis and presented in millions of U.S. dollars or as a percentage, as applicable; and

(B) With the exception of amounts disclosed pursuant to paragraphs (c)(1), (5), (9), (14), (19), (23), and (28) of this section, as simple averages of daily calculations over a quarterly reporting period;

(ii) A covered depository institution holding company that is required to calculate its liquidity coverage ratio on a monthly basis pursuant to § 249.61, must calculate its disclosed average amounts as provided in paragraph (b)(1)(i) of this section, except that those amounts must be calculated as simple averages of monthly calculations over a quarterly reporting period;

(iii) A covered depository institution holding company or covered nonbank company subject to this subpart must disclose the beginning date and end date for each quarterly reporting period.

(2) *Calculation of average unweighted amounts*. (i) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate the average unweighted amount of HQLA as the average amount of eligible HQLA that meet the requirements specified in §§ 249.20 and 249.22 and is calculated prior to applying the haircuts required under § 249.21(b) to the amounts of eligible HQLA.

(ii) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate the average unweighted

amount of cash outflows and cash inflows before applying the outflow and inflow rates specified in §§ 249.32 and 249.33, respectively.

(3) *Calculation of average weighted amounts*. (i) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate the average weighted amount of high-quality liquid assets after applying the haircuts required under § 249.21(b) to the amounts of eligible HQLA.

(ii) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate the average weighted amount of cash outflows and cash inflows after applying the outflow and inflow rates specified in §§ 249.32 and 249.33, respectively.

(c) *Quantitative disclosures*. A covered depository institution holding company or covered nonbank company subject to this subpart must disclose all the information required under Table 1 to § 249.91(a)—Disclosure Template, including:

(1) The sum of the average unweighted amounts and average weighted amounts reported under paragraphs (c)(2) through (4) of this section (row 1);

(2) The average unweighted amount and average weighted amount of level 1 liquid assets that are eligible HQLA under § 249.21(b)(1) (row 2);

(3) The average unweighted amount and average weighted amount of level 2A liquid assets that are eligible HQLA under § 249.21(b)(2) (row 3);

(4) The average unweighted amount and average weighted amount of level 2B liquid assets that are eligible HQLA under § 249.21(b)(3) (row 4);

(5) The sum of the average unweighted amounts and average weighted amounts of cash outflows reported under paragraphs (c)(6) through (8) of this section (row 5);

(6) The average unweighted amount and average weighted amount of cash outflows under § 249.32(a)(1) (row 6);

(7) The average unweighted amount and average weighted amount of cash outflows under § 249.32(a)(2) through (5) (row 7);

(8) The average unweighted amount and average weighted amount of cash outflows under § 249.32(g) (row 8);

(9) The sum of the average unweighted amounts and average weighted amounts of cash outflows reported under paragraphs (c)(10) through (12) of this section (row 9);

(10) The average unweighted amount and average weighted amount of cash outflows under § 249.32(h)(3) and (4) (row 10);

(11) The average unweighted amount and average weighted amount of cash outflows under § 249.32(h)(1), (2), and (5), excluding paragraph (h)(2)(ii) (row 11);

(12) The average unweighted amount and average weighted amount of cash outflows under § 249.32(h)(2)(ii) (row 12);

(13) The average unweighted amount and average weighted amount of cash outflows under § 249.32(j) and (k) (row 13);

(14) The sum of the average unweighted amounts and average weighted amounts of cash outflows reported under paragraphs (c)(15) and (16) of this section (row 14);

(15) The average unweighted amount and average weighted amount of cash outflows under § 249.32(c) and (f) (row 15);

(16) The average unweighted amount and average weighted amount of cash outflows under § 249.32(b), (d), and (e) (row 16);

(17) The average unweighted amount and average weighted amount of cash outflows under § 249.32(l) (row 17);

(18) The average unweighted amount and average weighted amount of cash outflows under § 249.32(i) (row 18);

(19) The sum of average unweighted amounts and average weighted amounts of cash outflows reported under paragraphs (c)(5), (9), (13), (14), (17), and (18) of this section (row 19);

(20) The average unweighted amount and average weighted amount of cash inflows under § 249.33(f) (row 20);

(21) The average unweighted amount and average weighted amount of cash inflows under § 249.33(c) (row 21);

(22) The average unweighted amount and average weighted amount of cash inflows under § 249.33(d) (row 22);

(23) The sum of average unweighted amounts and average weighted amounts of cash inflows reported under paragraphs (c)(24) through (27) of this section (row 23);

(24) The average unweighted amount and average weighted amount of cash inflows under § 249.33(b) (row 24);

(25) The average unweighted amount and average weighted amount of cash inflows under § 249.33(e) (row 25);

(26) The average unweighted amount and average weighted amount of cash inflows under § 249.33(g) (row 26);

(27) The average unweighted amount and average weighted amount of cash inflows under § 249.33(h) (row 27);

(28) The sum of average unweighted amounts and average weighted amounts of cash inflows reported under paragraphs (c)(20) through (23) of this section (row 28);

(29) The average amount of the HQLA amounts as calculated under § 249.21(a) (row 29);

(30) The average amount of the total net cash outflow amounts excluding the maturity mismatch add-on as calculated under § 249.30(a)(1) and (2) (row 30);

(31) The average amount of the maturity mismatch add-ons as calculated under § 249.30(b) (row 31);

(32) The average amount of the total net cash outflow amounts as calculated under § 249.30 or § 249.63, as applicable (row 32);

(33) The average of the liquidity coverage ratios as calculated under § 249.10(b) (row 33).

(d) *Qualitative disclosures.* (1) A covered depository institution holding company or covered nonbank company subject to this subpart must provide a qualitative discussion of its liquidity coverage ratio results. The qualitative

discussion may include, but does not have to be limited to the following items to the extent they are significant to the liquidity coverage ratio results of the covered depository institution holding company or covered nonbank company, and facilitate an understanding of the data provided:

(i) The main drivers of the liquidity coverage ratio results;

(ii) Changes in the liquidity coverage ratio results over time;

(iii) The composition of eligible HQLA;

(iv) Concentration of funding sources;

(v) Derivative exposures and potential collateral calls;

(vi) Currency mismatch in the liquidity coverage ratio;

(vii) The centralized liquidity management function of the covered depository institution holding company or covered nonbank company and its interaction with other functional areas of the covered depository institution holding company or covered nonbank company; or

(viii) Other inflows, outflows, or other factors in the liquidity coverage ratio calculation that are not captured in the disclosures required by paragraph (b) of this section, but which the covered depository institution holding company or covered nonbank company considers to be relevant to facilitate an understanding of its liquidity risk profile.

(2) If a significant change occurs such that the disclosed amounts or previously disclosed amounts are no longer reflective of the current liquidity profile of the covered depository institution holding company or covered nonbank company, then the company must provide a brief discussion of this change and its likely impact.

By order of the Board of Governors of the Federal Reserve System, November 20, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015-30095 Filed 11-30-15; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

16 CFR Part 433

RIN 3084-AB16

Rules and Regulations Under the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("Commission") requests

public comment on the overall costs and benefits, and regulatory and economic impact, of its Rules and Regulations under the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, commonly known as the "Holder Rule," as part of the agency's regular review of all its regulations and guides.

DATES: Written comments must be received on or before February 12, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Holder Rule Review, FTC File No. P164800" on your comment. You may file your comment online at <https://ftcpublishcommentworks.com/ftc/holderrule> by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Stephanie Rosenthal (202) 326-3332, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On November 14, 1975, the Commission promulgated its Trade Regulation Rule concerning the Preservation of Consumers' Claims and Defenses. The Holder Rule protects consumers who enter into credit contracts with a seller of goods or services by preserving their right to assert claims and defenses against any holder of the contract, even if the original seller subsequently assigns the contract to a third-party creditor or assignee. It requires sellers that arrange for or offer credit to finance consumers' purchases to include the following Notice in their contracts:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED . . . WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.¹

¹ 16 CFR 433.2.

A creditor or assignee of the contract is thus subject to any claims or defenses that the consumer could assert against the seller.

II. Regulatory Review Program

The Commission periodically reviews all of its rules and guides. These reviews seek information about the costs and benefits of the agency's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying those rules and guides that warrant modification or rescission. Therefore, the Commission now solicits comments on, among other things, the economic impact of and the continuing need for the Holder Rule; possible developments in the case law that need to be reflected in the Holder Rule; and the effect on the Holder Rule of any regulatory, technological, economic, or other industry changes.

III. Request For Comment

The Commission solicits comment on the following specific questions related to the Holder Rule:

- (1) Is there a continuing need for the Holder Rule as currently promulgated? Why or why not?
- (2) What benefits has the Holder Rule provided to consumers? What evidence supports the asserted benefits?
- (3) What modifications, if any, should the Commission make to the Holder Rule to increase its benefits to consumers?
 - (a) What evidence supports the proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Holder Rule for consumers?
 - (c) How would these modifications impact businesses, particularly small businesses?
- (4) What impact has the Holder Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?
- (5) What significant costs, if any, has the Holder Rule imposed on consumers? What evidence supports the asserted costs?
- (6) What modifications, if any, should be made to the Holder Rule to reduce any costs imposed on consumers?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Holder Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Holder Rule for businesses, particularly small businesses?
- (7) What benefits, if any, has the Holder Rule provided to businesses, and

in particular to small businesses? What evidence supports the asserted benefits?

- (8) What modifications, if any, should be made to the Holder Rule to increase the benefits to businesses, and particularly to small businesses?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Holder Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Holder Rule for businesses?
- (9) What significant costs, if any, including costs of compliance, has the Holder Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?
- (10) What modifications, if any, should be made to the Holder Rule to reduce the costs imposed on businesses, and particularly on small businesses?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Holder Rule for businesses?
- (11) What evidence is available concerning the degree of industry compliance with the Holder Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (12) Are any of the Holder Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.
- (13) What modifications, if any, should be made to the Holder Rule to account for changes in relevant technology or economic conditions?
 - (a) What evidence supports the proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Holder Rule for consumers and businesses, particularly small businesses?
- (14) Does the Holder Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?
 - (a) What evidence supports the asserted conflicts?
 - (b) With reference to the asserted conflicts, should the Holder Rule be modified? If so, why, and how? If not, why not?
- (15) Are there foreign or international laws, regulations, or standards with respect to the products or services covered by the Holder Rule that the Commission should consider as it reviews the Holder Rule? If so, what are they?
 - (a) Should the Holder Rule be modified in order to harmonize with

these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Holder Rule for consumers and businesses, particularly small businesses?

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 12, 2016. Write "Holder Rule Review, FTC File No. P164800" on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record. Your comment will be kept confidential only if the FTC

General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/holderrule>, by following the instructions on the Web-based form. If this Notice appears at <http://www.regulations.gov/> #!home, you also may file a comment through that Web site.

If you file your comment on paper, write "Holder Rule Review, FTC File No. P164800" on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor Suite 5610 (Annex B), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 12, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2015-30359 Filed 11-30-15; 8:45 am]

BILLING CODE 6750-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1028

Protection of Human Subjects

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 8, 2015, the federal departments and agencies subject to the Federal Policy for the Protection of Human Subjects (referred to as the "Common Rule") published a notice of proposed rulemaking ("NPR") amending the Common Rule. Separately, on September 24, 2015, the Consumer Product Safety Commission ("CPSC" or "Commission") proposed to adopt the Common Rule NPR by amending the Commission's regulations. The comment period for the Common Rule NPR is being extended; therefore, CPSC is extending the comment period for its proposed rule, accordingly.

DATES: The comment period for the CPSC's NPR published on September 24, 2015 (80 FR 57549), is extended by 30 days and thus will end on January 6, 2016.

ADDRESSES: You may submit comments, identified by docket ID number HHS-OPHS-2015-0008, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Enter the above docket ID number in the "Enter Keyword or ID" field and click on "Search." On the next Web page, click on "Submit a Comment" action and follow the instructions.

- *Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions] to:* Jerry Menikoff, M.D., J.D., OHRP, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received, including any personal information, will be posted without change to www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Hope E. J. Nesteruk, Human Factors Engineer, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301-987-2579; email: hnesteruk@cpsc.gov.

SUPPLEMENTARY INFORMATION: Since the Common Rule NPR was published on September 8, 2015 (80 FR 53933), participating departments and agencies have received requests to extend the comment period to allow sufficient time for a full review of the proposed rule. Accordingly, the comment period for the Common Rule NPR published on September 8, 2015, has been extended and will end on January 6, 2016. Along with the other participating departments and agencies subject to the Common Rule, the CPSC provides notice that the comment period on the CPSC's NPR published on September 24, 2015 (80 FR 57549), has been extended to afford the public an additional opportunity to comment through the process set forth

in the **ADDRESSES** section of this document.

Dated: November 25, 2015.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 2015-30407 Filed 11-30-15; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2015-0729]

Port of Miami Anchorage Area; Atlantic Ocean, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: U.S. Coast Guard Sector Miami received a study from the Florida Department of Environmental Protection, Southeast Florida Coral Reef Initiative (SEFCRI) concluding that the Miami Anchorage could be changed to reduce threats to protected coral and its habitat. The study indicated that the Miami Anchorage could be divided into two separate anchorage areas to reduce threats to protected coral while also facilitating the safe anchorage of shallow and deep draft vessels. The Coast Guard requests comments from interested persons regarding a possible modification of the Miami Anchorage based on the SEFCRI study.

DATES: All comments and related material must be received by the Coast Guard on or before February 1, 2016.

ADDRESSES: You may submit comments identified by docket number USCG-2015-0729 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this document, call or email LT Ruth Sadowitz, Sector Miami Waterways Division Chief at 305-535-4307 or email at ruth.a.sadowitz@uscg.mil.

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register

SECFRI Florida Department of
Environmental Protection, Southeast
Florida Coral Reef Initiative
U.S.C. United States Code

II. Background and Purpose

South Florida is home to numerous threatened and endangered marine species, including hard and soft corals. These corals are routinely damaged by standard maritime activities such as anchoring. Damage to corals not only affects the survivability of individual corals but may have a cumulative impact on the marine ecosystem as a whole.

The Coast Guard establishes anchorage areas in order facilitate use of the navigable waterways by both recreational and commercial vessels. Anchorage areas ensure safe navigation, and protection of life and the environment. The Coast Guard previously established an anchorage area in the waters of the Atlantic Ocean, east of Miami Beach, Florida.

In 2008, the Florida Department of Environmental Protection, Southeast Florida Coral Reef Initiative (SECFRI) in coordination with the Anchorage Working Group (AWG) and the Coast Guard began working on methods to reduce damage to coral in the Miami Anchorage area. SECFRI completed a study indicating that it may be appropriate to change the Miami Anchorage area. The revision to the Miami Anchorage described below would break the anchorage into two authorized anchorage zones, a western anchorage and a larger eastern

anchorage. We believe such a change would continue to ensure safe navigation in and around the Port of Miami while preserving imperiled species in the marine environment.

III. Public Participation and Request for Comments

We encourage you to submit comments on the change to the Miami Anchorage area described in the SECFRI study. SECFRI's study will be available on the docket and can be accessed on the Federal eRulemaking Portal at <http://www.regulations.gov> by searching for the following docket number: USCG-2015-0729. We will consider all submissions in helping us to determine whether we should initiate a rulemaking to amend our existing Miami Anchorage regulation. If you submit a comment, please include the docket number, indicate the specific aspect of the change described in SECFRI study to which each comment applies, and provide a reason for each suggestion or recommendation.

Please submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this publication, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up

for email alerts, you will be notified when comments are posted or other material is added to the docket, including all documents published by the Coast Guard related to this request for comments.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005 issue of the **Federal Register** (70 FR 15086).

Please provide comments regarding the possible change listed below. In addition, please provide comments regarding potential impacts of this possible change and/or other concerns that you may have regarding the Miami Anchorage.

SECFRI's study concludes that the current Miami Anchorage established by coordinates in 33 CFR 110.188 (Atlantic Ocean off Miami and Miami Beach, FL) could be amended to mitigate threats to coral habitat and ensure that no vessels anchored in the area would damage protected coral bottom. The amended coordinates would establish two anchorages with a combined area of approximately 1.5 square miles and reduce the total anchorage area by approximately 3 square nautical miles. The amended anchorage areas would be established with the following coordinates:

SMALL WESTERN ANCHORAGE

[Approximate water depths: 45 ft]

NW Corner	80° 5'37.225" N	25° 47'57.687" W.
NE Corner	80° 5'26.466" N	25° 47'57.341" W.
SE Corner	80° 5'27.069" N	25° 46'31.443" W.
SW Corner	80° 5'37.868" N	25° 46'31.557" W.

LARGE EASTERN ANCHORAGE

[Approximate water depths: 120 ft]

NW Corner	80° 4'59.155" N	25° 48'13.841" W.
NE Corner	80° 4'4.582" N	25° 48'4.617" W.
SE Corner	80° 4'28.387" N	25° 46'32.712" W.
SW Corner	80° 4'59.775" N	25° 46'32.767" W.

Authority: This notice is issued under authority of 5 U.S.C. 552(a).

Dated: November 24, 2015.

S.A. Buschman,

*Rear Admiral, U.S. Coast Guard, Commander,
Seventh Coast Guard District.*

[FR Doc. 2015-30406 Filed 11-30-15; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 7**[NPS-ROMO-19562; PPIMROM06P
PPMPSAS1Z.YP0000]

RIN 1024-AE31

**Special Regulations, Areas of the
National Park System, Rocky Mountain
National Park****AGENCY:** National Park Service, Interior.**ACTION:** Proposed rule; notice of
determination.

SUMMARY: The National Park Service proposes to amend the special regulations for Rocky Mountain National Park to allow bicycle use on a 2-mile segment of the East Shore Trail located within the park. A portion of this 2-mile segment will require trail construction activities to accommodate bicycles and is therefore considered a new trail that will be opened to bicycles. National Park Service regulations require promulgation of a special regulation to designate new trails for bicycle use off park roads and outside developed areas. National Park Service regulations require publication of notice in the **Federal Register** providing the public at least 30 days to review and comment on a written determination supporting bicycle use on an existing trail.

DATES: Comments on the proposed rule and the notice of determination must be received by 11:59 p.m. EST on February 1, 2016.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE31, by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail or hand deliver to:* Superintendent, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, CO 80517.

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the docket number or RIN (1024-AE31) for this rulemaking. Comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Larry Gamble, Chief of Planning and Compliance, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, CO 80517. Phone (970) 586-1320.

Email: larry_gamble@nps.gov.

SUPPLEMENTARY INFORMATION:**Background**

Rocky Mountain National Park (park) was established in 1915 and is located in north central Colorado. The approximate 265,761-acre park contains spectacular scenery that includes majestic mountains, lakes, rivers, forests, meadows, and abundant wildlife. The East Shore Trail is an existing hiking trail that runs roughly north/south along the east shore of Shadow Mountain Lake near the town of Grand Lake, Colorado. The entire trail is 6.2 miles long and ends at the southern boundary of the park. The East Shore Trailhead is located south of the town of Grand Lake. The trailhead and the first 0.7 miles of the trail are located on land administered by the U.S. Forest Service as part of the Arapaho National Recreation Area. Bicycle use is currently permitted only on this 0.7-mile section of the trail. The remaining 5.5 miles of the East Shore Trail are located within the park. Hiking and fishing access to the lake are allowed along the trail. The proposed rule applies to the northernmost 2-mile segment of the East Shore Trail within the park extending north from Shadow Mountain Dam to the park boundary. Within this 2-mile segment, livestock (horses, mules, and llamas) are permitted on the northernmost 0.9 mile of the trail, which is also part of the Continental Divide National Scenic Trail. The 2-mile segment of the East Shore Trail corridor within the park is bounded on the west by Shadow Mountain Lake and on the east by designated wilderness.

In January 2014, the National Park Service (NPS) published the East Shore Trail Environmental Assessment (EA). The EA evaluates (i) the suitability of the trail for bicycle use; and (ii) life cycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, and methods to protect natural and cultural resources and mitigate impacts associated with bicycle use on the trail. After a public review period, the Regional Director of the Intermountain Region signed a Finding of No Significant Impact (FONSI) in February 2015 that selected the preferred alternative (Alternative B) described in the EA.

At the same time that the Regional Director signed the FONSI, the Superintendent signed a written determination concluding that bicycle

use on the 2-mile trail segment is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and would not disturb wildlife or park resources. This written determination is attached to the FONSI and appears on page 15 of that document. The FONSI concludes that a 1.75-mile section of the trail is an “existing trail” under 36 CFR 4.30 and that bicycle use on that section of the trail will have no significant impacts. Bicycle use therefore may be authorized on that section of the trail after the written determination is published in the **Federal Register** with a minimum 30-day public review and comment period, after consideration of any comments submitted on the written determination, and after the Regional Director approves the written determination. The FONSI separately concludes that, due to rerouting and trail modifications, a 0.25-mile section of the trail that has not yet been constructed is a “new trail” under 36 CFR 4.30 and therefore requires promulgation of a special regulation before allowing bicycle use on this portion of the trail. The NPS has determined that, instead of publishing two documents in the **Federal Register** (notice of the written determination and this proposed rule), it would be more efficient to consolidate both documents into a single one, publish a single document in the **Federal Register**, and allow the public 60 days to comment at the same time on both the written determination for the 1.75-mile section of existing trail and the proposed rule that would allow the Superintendent to designate all or portions of the 2-mile segment of the East Shore Trail for bicycle use.

The EA, FONSI, and written determination, which contain a full description of the purpose and need for taking action, scoping, the alternatives considered, maps, and the environmental impacts associated with the project, may be viewed on the park's planning Web site at <http://parkplanning.nps.gov/romo>, by clicking on the link entitled “East Shore Trail Environmental Assessment” and then clicking on the link entitled “Document List.”

Proposed Rule

This proposed rule would implement the selected action in the FONSI and authorize the Superintendent to designate bicycle use on a 2-mile segment of the East Shore Trail within the park. This segment of the trail extends north from Shadow Mountain Dam to the park boundary. To

accommodate bicycle use, a 0.25-mile section of the existing trail will be rerouted to improve public safety, to avoid sensitive natural and cultural resources, and to provide for sustainability of the trail. NPS regulations at 36 CFR 4.30 require a rulemaking to implement this decision because a portion of the rerouted trail will require trail construction activities and is located in an undeveloped area. Bicycle use would not be authorized by the Superintendent until the rerouted trail segments are completed. Rerouting is expected to be completed by 2017.

The proposed rule would add a new paragraph (f) to section 7.7—Special Regulations, Areas of the National Park System for Rocky Mountain National Park. The proposed rule would require the Superintendent to notify the public of any designation of the trail for bicycle use through one or more of the methods listed in 36 CFR 1.7, and identify the designation on maps available in the office of the Superintendent and other places convenient to the public.

The rule would also authorize the superintendent to establish closures, conditions, or restrictions for bicycle use on designated routes in accordance with 36 CFR 4.30(f).

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled “Benefit-Cost and Regulatory Flexibility Analyses: East Shore Trail at Rocky Mountain National Park” which is available online at <http://parkplanning.nps.gov/romo> by clicking on the link entitled “East Shore Trail Environmental Assessment” and then clicking on the link entitled “Document List.”

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of federally-administered lands and waters. It has no outside

effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. Nevertheless, the NPS mailed a letter on April 18, 2013 inviting input specifically from affiliated Native American tribes and offering to arrange a site visit. No response was received.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We 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.

National Environmental Policy Act

We have prepared the EA to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required because we reached a FONSI. A copy of the EA and FONSI can be found online at <http://>

parkplanning.nps.gov/romo by clicking on the link entitled “East Shore Trail Environmental Assessment” and then clicking on the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information

The primary authors of this regulation are Larry Gamble of Rocky Mountain National Park, Jay Calhoun, Regulations Program Specialist, National Park Service, and Andee Sears of the Alaska Regional Office.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

National parks, Reporting and Recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

- 1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10–137 and D.C. Code 50–2201.07.

- 2. Add paragraph (f) to § 7.7 to read as follows:

§ 7.7 Rocky Mountain National Park.

* * * * *

(f) *Bicycle Use on the East Shore Trail.* The Superintendent may designate all or portions of a 2-mile segment of the East Shore Trail, extending north from Shadow Mountain Dam to the park boundary, as open to bicycle use. A map showing portions of the East Shore Trail open to bicycle use will be available at park visitor centers and posted on the park Web site. The Superintendent will provide notice of all bicycle route designations in accordance with § 1.7 of this chapter. The superintendent may limit, restrict, or impose conditions on bicycle use, or close any trail to bicycle use, or terminate such conditions, closures, limits, or restrictions in accordance with § 4.30 of this chapter.

Dated: November 19, 2015.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–30348 Filed 11–30–15; 8:45 am]

BILLING CODE 4310–EJ–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 78, and 97

[EPA–HQ–OAR–2015–0500; FRL–9939–17–OAR]

Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public

hearing to be held for the proposed rule “Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS” which will publish in the **Federal Register**. The hearing will be held on Thursday, December 17, 2015, in Washington, DC.

DATES: The public hearing will be held on December 17, 2015.

ADDRESSES: The public hearing will be held at the Environmental Protection Agency, William Jefferson Clinton East Building, Main Floor Room 1153, 1201 Constitution Avenue NW. in Washington, DC 20460. The public hearing will convene at 9:00 a.m. EST and continue until 8:00 p.m. EST or one hour after the last registered speaker has spoken, whichever is earlier. The EPA will make every effort to accommodate all speakers that 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. 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 Web site for the rulemaking, which includes the proposal and information about the public hearing, can be found at: <http://www2.epa.gov/airmarkets/proposed-cross-state-air-pollution-update-rule>.

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, please register online at <http://www2.epa.gov/airmarkets/proposed-cross-state-air-pollution-update-rule> or contact Ms. Gabrielle Stevens, U.S. Environmental Protection Agency, Office of Atmospheric Programs, Clean Air Markets Division, (MS 6204–M), 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone (202) 343–9252, fax number (202) 343–2359, email address: stevens.gabrielle@epa.gov (preferred method for registering), no later than 2 business days prior to the public hearing. The last day to register will be Tuesday, December 15, 2015. If using email, please provide the following information: Time you wish to speak (morning, afternoon, evening), name, affiliation, address, email address, and telephone and fax numbers.

Questions concerning the proposed “Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS” should be addressed to Mr. David Risley, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, (MS–6204 M), 1200 Pennsylvania Avenue NW.,

Washington, DC 20460; telephone number (202) 343-9177, email at risley.david@epa.gov.

SUPPLEMENTARY INFORMATION: This public hearing provides the public with an opportunity to present oral comments regarding EPA's proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, which proposes Federal Implementation Plans that identify and limit emissions of nitrogen oxides in 23 eastern states that affect the ability of downwind states to attain and maintain compliance with the 2008 ozone national ambient air quality standard (NAAQS).

Public hearing: The proposal for which EPA is holding the public hearing will be published in the **Federal Register** and also in docket EPA-HQ-OAR-2015-0500 and is available at <http://www2.epa.gov/airmarkets/proposed-cross-state-air-pollution-update-rule>. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal. 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 any oral comments and supporting information presented at the public hearing.

Commenters should notify Ms. Stevens if they will need specific equipment, or if there are other special needs related to providing comments at the hearings. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via email or CD) or in hard copy form.

The hearing schedules, including lists of speakers, will be posted on EPA's Web site <http://www2.epa.gov/airmarkets/proposed-cross-state-air-pollution-update-rule>. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

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.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed "Cross-State Air Pollution Rule Update for the 2008 Ozone

NAAQS" under Docket ID No. EPA-HQ-OAR-2015-0500 (available at www.regulations.gov).

Dated: November 24, 2015.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2015-30489 Filed 11-30-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2009-0234; FRL-9939-45-OAR]

RIN 2060-AS76

Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed supplemental finding and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting comment on a proposed supplemental finding that consideration of cost does not alter the agency's previous conclusion that it is appropriate and necessary to regulate coal- and oil-fired electric utility steam generating units (EGUs) under section 112 of the Clean Air Act (CAA). In light of the U.S. Supreme Court decision in *Michigan v. EPA*, 135 S.Ct. 2699 (2015), the EPA has taken cost into account in evaluating whether such regulation is appropriate. In this document, the EPA sets forth its proposed supplemental finding and requests comment on all aspects of that finding and the supporting legal memorandum in the docket for this action. This proposed supplemental finding, if finalized after consideration of comments, will conclude that coal- and oil-fired EGUs are properly included on the CAA section 112(c) list of sources that must be regulated under CAA section 112(d).

DATES: *Comments.* Comments must be received on or before January 15, 2016.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0234 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Instructions: All submissions must include the agency name and Docket ID No. (EPA-HQ-OAR-2009-0234). The EPA's policy is to include all comments received without change, including any personal information provided, in the public docket, available online at <http://www.regulations.gov>, unless the comment includes information claimed to be 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. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2009-0234. 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 you claim as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

The EPA requests that you also submit a separate copy of your comments to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). If the comment includes information you consider to be CBI or otherwise protected, you should send a copy of the comment that does not contain the information claimed as CBI or otherwise protected.

The www.regulations.gov Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>,

your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA 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 federal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. Visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm> for additional information about the EPA's public docket.

In addition to being available in the docket, an electronic copy of this proposed supplemental finding will be available on the World Wide Web (WWW). Following signature, a copy of the proposed supplemental finding will be posted at the following address: <http://www3.epa.gov/mats/actions.html>.

Public Hearing: A public hearing will be held if requested by December 6, 2015 to accept oral comments on this proposed action. The hearing will be held, if requested, on December 16, 2015 at the EPA's North Carolina Campus located at 109 T.W. Alexander Drive, Research Triangle Park, NC

27711. The hearing, if requested, will begin at 9:00 a.m. (local time) and will conclude at 1:00 p.m. (local time). To request a hearing, to register to speak at a hearing, or to inquire if a hearing will be held, please contact Ms. Virginia Hunt at (919) 541-0832 or by email at hunt.virginia@epa.gov. The last day to pre-register to speak at a hearing, if one is held, will be December 14, 2015. 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. Please note that registration requests received before the hearing will be confirmed by the EPA via email.

Please note that any updates made to any aspect of the hearing, including whether or not a hearing will be held, will be posted online at <http://www3.epa.gov/mats/actions.html>. We ask that you contact Ms. Virginia Hunt at (919) 541-0832 or by email at hunt.virginia@epa.gov or monitor our Web site to determine if a hearing will be held. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates. Please go to <http://www3.epa.gov/mats/actions.html> for more information on the public hearing.

FOR FURTHER INFORMATION CONTACT: Dr. Nick Hutson, Energy Strategies Group, Sector Policies and Programs Division (D243-01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541-2968, facsimile number (919) 541-5450; email address: hutson.nick@epa.gov.

SUPPLEMENTARY INFORMATION:

Organization of This Document. The information presented in this document is organized as follows:

- I. General Information
 - A. Executive Summary
 - B. Does this action apply to me?
 - C. The Limited Scope of This Action
- II. Hazards to Public Health and the Environment From HAP Emitted by EGUs
- III. Cost Consideration Under CAA Section 112(n)(1)
- IV. Considerations of Cost
 - A. Introduction
 - B. Consideration of Cost to the Power Sector
 - C. Other Costs
 - D. Incorporating Cost Into the Appropriate Finding
- V. Consideration of the Benefit-Cost Analysis in the MATS RIA
 - A. Introduction
 - B. Background on Benefit-Cost Analyses
 - C. Consideration of HAP Benefits
 - D. Consideration of Total Benefits and Benefit-Cost Comparisons
 - E. Conclusions Regarding the Benefit-Cost Analysis

VI. Conclusion

- VII. 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 (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - 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 (NTTAA)
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Determination Under CAA Section 307(d)
- VIII. Statutory Authority

I. General Information

A. Executive Summary

The EPA is requesting comment on this proposed supplemental finding that including a consideration of cost does not alter the agency's previous determination that it is appropriate and necessary to regulate coal- and oil-fired EGUs under section 112 of the CAA. In light of the U.S. Supreme Court (Supreme Court) decision in *Michigan v. EPA*, 135 S.Ct. 2699 (2015), the EPA has taken cost into account in evaluating whether such regulation is appropriate and has determined that including such consideration does not alter the EPA's original conclusion that it is appropriate to regulate hazardous air pollutant (HAP) emissions from EGUs. This proposed supplemental finding, if made final after consideration of public comments, will conclude that coal- and oil-fired EGUs are properly included on the CAA section 112(c) list of sources that must be regulated under CAA section 112(d).

The EPA issued national emission standards for hazardous air pollutants (NESHAP) for coal- and oil-fired electric utility units, known as the Mercury and Air Toxics Standards or “MATS,” on February 16, 2012. Almost 12 years earlier, on December 20, 2000, the EPA determined, pursuant to CAA section 112(n)(1)(A), that it was appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112 and added such units to the CAA section 112(c) list of sources that must be regulated under CAA section 112(d). (December 2000

Finding; 65 FR 79825.) The appropriate and necessary finding was based primarily on consideration of the *Utility Study Report to Congress* (Utility Study),¹ the *Mercury Study Report to Congress* (Mercury Study),² the National Academies of Science's *Toxicological Effects of Methylmercury* (NAS Study),³ and mercury data collected from coal-fired EGUs after completion of the studies. 65 FR 79826. After consideration of this information, the EPA found that it was appropriate to regulate HAP emissions from EGUs because such emissions pose significant hazards to public health and the environment and also because the EPA determined that there were available controls to effectively reduce mercury and other HAP emissions from EGUs. 64 FR 79825, 79830/2. The EPA found that it was necessary to regulate HAP emissions from EGUs because implementation of the other requirements of the CAA would not adequately address the serious hazards to public health and the environment posed by HAP emissions from EGUs and because CAA section 112 is the authority intended to regulate HAP emissions from stationary sources. *Id.*

On May 3, 2011, the EPA reaffirmed the 2000 appropriate and necessary finding and listing of EGUs, and

proposed MATS pursuant to CAA section 112(d). 76 FR 24976. The EPA responded to comments on the appropriate and necessary finding, as well as the proposed MATS, and issued the final MATS on February 16, 2012. 77 FR 9304. Industry, states, environmental organizations, and public health organizations challenged many aspects of the EPA's appropriate and necessary finding and the final MATS rule in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court), and the Court denied all challenges. *White Stallion Energy Center v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014). Some industry and state petitioners sought further review of the final MATS rule, and the Supreme Court granted *certiorari* to determine whether the EPA erred when it concluded that the appropriate and necessary finding under CAA section 112(n)(1)(A) could be made without consideration of cost. On June 29, 2015, the Supreme Court ruled that the EPA acted unreasonably when it determined cost was irrelevant to the appropriate and necessary finding. *Michigan v. EPA*, 135 S.Ct. 2699 (2015). Specifically, the Supreme Court held that the agency must consider cost before deciding whether regulation is appropriate and necessary, noting also

that it will be up to the agency "to decide, within the limits of reasonable interpretation, how to account for cost." *Michigan*, 135 S.Ct. at 2711.

The EPA, in response to the Supreme Court's direction, has now added consideration of cost to the appropriate and necessary finding as detailed in this document. In this document, the EPA concludes that including such consideration of cost does not alter the agency's previous determination that it is appropriate to regulate HAP emissions from EGUs. The agency is taking comment on the proposed supplemental finding through this document. The EPA is also taking comment on the supporting document "Legal Memorandum Accompanying the Proposed Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs)" (Legal Memorandum) available in the docket for this action (EPA-HQ-OAR-2009-0234).

B. Does this action apply to me?

The regulated categories and entities potentially affected by this proposed supplemental notice are shown below in Table 1.

TABLE 1—POTENTIALLY AFFECTED REGULATED CATEGORIES AND ENTITIES

Category	NAICS Code ¹	Examples of potentially affected entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	² 221122	Fossil fuel-fired electric utility steam generating units owned by the federal government.
State/local/tribal government	² 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

¹ North American Industry Classification System (NAICS).

² Federal, state, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 60.4 or 40 CFR 63.13 (General Provisions).

C. The Limited Scope of This Action

This action is in response to the Supreme Court's decision that the EPA must consider cost in the initial

determination that regulation of HAP emissions from EGUs is appropriate under CAA section 112. In this document, the EPA provides detailed information on how the agency has taken cost into account in evaluating whether regulation of HAP from coal- and oil-fired electric utility steam generating units is appropriate and explains why the EPA proposes to find that including such consideration does not alter the previous determination. The EPA requests comment on this proposed supplemental finding and on the supporting Legal Memorandum

available in the rulemaking docket (EPA-HQ-OAR-2009-0234).

The EPA is accepting comment only on the consideration of cost in making the appropriate determination and listing of EGUs. The analyses presented in this document and the Legal Memorandum in support of this document do not affect or alter other aspects of the appropriate and necessary interpretation or finding, or the CAA section 112(d) emission standards promulgated in MATS. These analyses also do not alter the Regulatory Impact Analysis (RIA) prepared for the final MATS. Specifically, the EPA is not

¹ U.S. EPA. 1998. Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress. EPA-453/R-98-004a. February. Docket ID No. EPA-HQ-OAR-2009-0234-3052.

² U.S. EPA. 1997. Mercury Study Report to Congress. EPA-452/R-97-003. December. Docket ID No. EPA-HQ-OAR-2009-0234-3054.

³ National Research Council. 2000. Toxicological Effects of Methylmercury. Committee on the Toxicological Effects of Methylmercury, National Academy Press, Washington, DC. Docket ID No. EPA-HQ-OAR-2009-0234-3055.

accepting comment on the scientific or technical aspects of the 2000 appropriate and necessary finding and subsequent reaffirmation. These findings include that mercury and other HAP emissions are hazardous to public health and the environment, that EGUs are the largest emitter of many HAP, that effective control strategies for HAP emissions are available, and that HAP hazards remain after implementation of other CAA provisions. We are only accepting comment on the consideration of cost aspect presented in this proposed supplementary finding. Therefore, we are not opening for comment or proposing to revise any other aspects of the appropriate and necessary interpretation or finding, or the MATS standards themselves, as part of this action. The final MATS standards were supported by an extensive administrative record and based on available control technologies and other practices already used by the better-controlled and lower-emitting EGUs, and the EPA previously concluded that the standards are achievable and reduce hazards to public health and the environment from HAP emitted by EGUs. 76 FR 24976 (MATS proposal); 77 FR 9304 (MATS final). In addition, the public had ample opportunity to comment on all aspects of the CAA section 112(d) standards, the RIA, and the appropriate and necessary finding beyond the consideration of cost; and the EPA responded to all of the significant comments.⁴

Also, the Supreme Court's decision neither calls into question nor reverses the portions of the D.C. Circuit Court's opinion unanimously rejecting all other challenges to the appropriate and necessary interpretation and finding and the HAP emission standards that the EPA promulgated in the final MATS rule. Industry, states, environmental organizations, and public health organizations challenged many aspects of the EPA's appropriate and necessary finding and the MATS emissions standards, including: (1) The EPA's reliance on the CAA section 112(c)(9) delisting criteria for determining the level of risk worth regulating; (2) the EPA's decision not to consider cost in making the appropriate and necessary determination and listing of EGUs; (3) the EPA's use of identified environmental harms as a basis for finding it appropriate and necessary to

regulate HAP emissions from EGUs; (4) the EPA's consideration of the cumulative impacts of HAP emissions from EGUs and other sources in determining whether EGUs pose a hazard to public health or the environment; (5) the EPA's regulation of EGUs pursuant to CAA section 112(d) after adding EGUs to the section 112(c) list pursuant to the appropriate and necessary finding; (6) the EPA's determination that all HAP from EGUs should be regulated; (7) the EPA's technical basis for concluding that EGUs pose a hazard to public health or the environment; (8) the EPA's determination to regulate all EGUs as defined in CAA section 112(a)(8) in the same manner whether or not the individual units are located at major or area sources of HAP; (9) the EPA's emissions standards for mercury and acid gas HAP, including the EPA's decision not to set health based emission standards for acid gas HAP; (10) the EPA's use of certified data submitted by regulated parties; (11) the EPA's denial of a delisting petition filed by an industry trade group; (12) the EPA's decision not to subcategorize a certain type of EGU; and (13) the EPA's decision to allow EGUs to average HAP emissions among certain EGUs. The D.C. Circuit Court denied all challenges to the CAA section 112(n)(1)(A) appropriate and necessary finding and to the CAA section 112(d) MATS rule, and, with the exception of the cost issue relevant to the section 112(n)(1)(A) finding, all the challenges were unanimously rejected. *White Stallion Energy Center v. EPA*, 748 F.3d 1222 (April 15, 2014). Consequently, we are not soliciting comment nor are we revisiting those final actions that were unanimously upheld in *White Stallion Energy Center v. EPA*, 748 F.3d 1222 (April 15, 2014).

In addition, the EPA's citation to any final decision, interpretation, or conclusion in the MATS record does not constitute a re-opening of the issue or an invitation to comment on the underlying decision in which the EPA considered some cost of MATS (e.g., in CAA section 112(d) beyond-the-floor analyses either establishing or declining to establish a standard more stringent than the maximum achievable control technology (MACT) floor).

It is worth noting that the issue addressed in this document—whether a consideration of cost alters the agency's previous determination that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs—goes to the listing of EGUs under CAA section 112. Under CAA section 112, such listing decisions are not final

agency actions for purposes of judicial review. Instead, the public can comment on listing decisions during the CAA section 307(d) standard development process and challenge such decisions when the EPA issues final standards for a source category. See CAA section 112(e)(4) (“Notwithstanding section [307 of the CAA], no action of the Administrator . . . listing a source category or subcategory under subsection (c) of this section shall be a final agency action subject to judicial review, except that any such action may be reviewed under section [307 of the CAA] when the Administrator issues emission standards for such . . . category.”). Because the final standards for coal- and oil-fired EGUs have been issued, the normal vehicle for taking comment on aspects of the listing decision is not available to the EPA at this time. Consequently, the agency is providing this separate proposal to provide an opportunity for public comment on this nationally applicable proposed supplemental finding that it is appropriate and necessary to regulate coal- and oil-fired EGUs after considering cost, the cost analyses set forth below, and the supplemental legal analysis in the supporting Legal Memorandum available in the docket for this rulemaking. The EPA will issue its final determination after consideration of significant comments, consistent with the rulemaking requirements set forth in CAA section 307(d).

II. Hazards to Public Health and the Environment From HAP Emitted by EGUs

In the current action, the EPA adds a consideration of cost to the determination of whether it is appropriate to regulate HAP emissions from EGUs. As discussed in Sections III and IV.D of this document, it is the EPA's view that the consideration of cost in the appropriate finding should be weighed against, among other things, the volume of HAP emitted by EGUs and the associated hazards to public health and the environment. In this supplemental finding, therefore, the significant hazards to public health and the environment from HAP emitted by EGUs (and the substantial reductions in HAP emissions achieved by MATS that are described in Section IV.B.2 of this document) should be weighed against the costs of compliance.⁵ Indeed, these

⁴ 77 FR 3919–62; 77 FR 9386–9423; U.S. EPA. 2011. EPA's Responses to Public Comments on EPA's National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units. December 2011. Volumes 1 and 2. Docket ID No. EPA-HQ-OAR-2009-0234–20126.

⁵ The context provided by CAA section 112 generally demonstrates Congress' focus on the inherent risks posed by HAP emissions. To address those risks, Congress substantially amended CAA section 112 in 1990 to achieve prompt, permanent and ongoing reductions of HAP emissions from

hazards provided the basis for the EPA's December 2000 Finding,⁶ and the agency's 2011 reaffirmation of the finding,^{7 8} that regulation of HAP emissions from EGUs is appropriate and necessary. In this Section, we provide a summary of these hazards, which are further described in the record for the MATS.

As described in the peer-reviewed Mercury Study, mercury is a persistent, bioaccumulative toxic metal that can be emitted from coal-fired power plants in several chemical forms. Once deposited to water or land, mercury can be transformed into methylmercury (MeHg) by microbial action. MeHg is efficiently taken up by aquatic organisms and bioaccumulates in the aquatic food web. Larger predatory fish may have MeHg concentrations many times higher than, typically on the order of 1 million times, that of the concentrations in the freshwater body in which they live. Exposure to MeHg through ingestion of fish is the primary route for human exposures in the U.S. In 2000, the NAS Study reviewed the effects of MeHg on human health and concluded that mercury is highly toxic to multiple human and animal organ systems. Chronic low-dose prenatal exposure to MeHg from maternal consumption of fish has been associated with subtle neurotoxicity, which is manifest as poor performance on neurobehavioral tests, particularly on tests of attention, fine motor-function, language, and visual-spatial ability. The NAS concluded that the population at highest risk is the children of women who consumed large amounts of fish and seafood during pregnancy and that the risk to that population is likely to be sufficient to result in an increase in the number of children who have to struggle to keep up in school.

Exposure to high levels of the various non-mercury HAP (e.g., arsenic, nickel, chromium, selenium, cadmium, hydrogen chloride, hydrogen fluoride, hydrogen cyanide, formaldehyde, benzene, acetaldehyde, manganese, and lead) emitted by EGUs is associated with a variety of adverse health effects. See, e.g., 76 FR 25003–5. These adverse

stationary sources and to reduce the associated risks to public health, including the effects on the most exposed and sensitive members of the population, and the environment. See *NMA v. EPA*, 59 F.3d at 1352–53 (discussing the purpose and impact of the 1990 CAA Amendments to section 112); see also *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 857–58 (D.C. Cir. 2001); *Sierra Club v. EPA*, 353 F.3d at 978–80; *NRDC v. EPA*, 489 F.3d 1364, 1368–69 (D.C. Cir. 2007); *NRDC v. EPA*, 529 F.3d 1077, 1079–80 (D.C. Cir. 2008).

⁶ 65 FR 79825–31.

⁷ 76 FR 24976–25020.

⁸ 77 FR 9304–66.

health effects include chronic health disorders (e.g., irritation of the lung, skin, and mucus membranes, effects on the 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 liver, kidney and nervous system effects). Three hazardous air pollutant metals (i.e., arsenic, nickel, and chromium) have been classified as human carcinogens, and cadmium is classified as a probable human carcinogen.

In 2011, the EPA conducted additional technical analyses to support the appropriate and necessary finding reaffirmation, including peer-reviewed risk assessments on human health effects associated with mercury and non-mercury HAP emissions from EGUs, focusing on risks to the most exposed and sensitive individuals in the population. In addition, the EPA found that EGUs are by far the largest U.S. anthropogenic source of mercury, selenium, hydrogen chloride, and hydrogen fluoride emissions, and a significant source of metallic HAP emissions including arsenic, chromium, nickel, and others.⁹ The revised nationwide Mercury Risk Assessment¹⁰ estimated that up to 29 percent of modeled watersheds potentially have sensitive populations at risk from exposure to mercury from U.S. EGUs, including up to 10 percent of modeled watersheds where deposition from U.S. EGUs alone leads to potential exposures that exceed the reference dose¹¹ for MeHg. See, e.g., 77 FR 9310–6. In addition, the inhalation risk assessment for non-mercury HAP¹² of 16 facilities

⁹ Specifically, the EPA estimated that in 2005 (the most recent inventory year available during the MATS rulemaking), U.S. EGUs emitted 50 percent of total domestic anthropogenic mercury emissions, 62 percent of total arsenic emissions, 39 percent of total cadmium emissions, 22 percent of total chromium emissions, 82 percent of total hydrogen chloride emissions, 62 percent of total hydrogen fluoride emissions, 28 percent of total nickel emissions, and 83 percent of total selenium emissions. Docket ID No. EPA–HQ–OAR–2009–0234–19914.

¹⁰ U.S. EPA. 2011. *Revised Technical Support Document: National-Scale Assessment of Mercury Risk to Populations with High Consumption of Self-caught Freshwater Fish In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units*. Office of Air Quality Planning and Standards. November. EPA–452/R–11–009. Docket ID No. EPA–HQ–OAR–2009–0234–19913.

¹¹ A reference dose is an estimate of daily exposure, experienced over a lifetime that is likely to be without a risk of adverse health effects to humans, including sensitive subpopulations.

¹² U.S. EPA. 2011. *Supplement to Non-mercury Case Study Chronic Inhalation Risk Assessment for the Utility MACT Appropriate and Necessary Analysis*. Office of Air Quality Planning and Standards. November. Docket ID No. EPA–HQ–OAR–2009–0234–19912.

estimated a lifetime cancer risk for an oil-fired EGU facility of 20-in-1 million, five coal-fired EGU facilities with cancer risks greater than 1-in-1 million, and one coal-fired facility with cancer risks of 5-in-1 million. See, e.g., 77 FR 9317–9.¹³ Further, qualitative analyses on ecosystem effects found that mercury emissions from U.S. EGUs contribute to adverse impacts on fish-eating birds and mammals and that acid gases contribute to environmental acidification and chronic non-cancer (respiratory) toxicity. See, e.g., 77 FR 9362–3. Moreover, the EPA concluded that in 2016, after implementation of other provisions of the CAA, HAP emissions from U.S. EGUs would still reasonably be anticipated to pose hazards to public health. See, e.g., 77 FR 9362–3. Finally, the EPA stated that the only way to ensure permanent reductions in HAP emissions from U.S. EGUs and the associated risks to public health and the environment is through standards set under CAA section 112.

As explained above, the agency's conclusions regarding these public health and environmental hazards are not affected by the cost analyses presented in this document and comments on the hazard conclusions will be considered outside the scope of this action. However, it is critical to note that the EPA's conclusions regarding the public health and environmental hazards associated with emissions from EGUs form the primary basis for the agency's previous determinations that regulation of HAP emissions from coal- and oil-fired EGUs is appropriate and necessary. See December 2000 Finding and proposed and final MATS. Furthermore, in evaluating costs (Section IV, below), the agency has considered whether the cost of compliance estimated to be incurred by the utility sector under MATS is reasonable when weighed against, among other things, the substantial hazards to public health and the environment posed by HAP emissions from EGUs.

III. Cost Consideration Under CAA Section 112(n)(1)

In *Michigan*, the Supreme Court held that the EPA erred when it concluded that it need not consider cost when determining whether the regulation of HAP emissions from coal- and oil-fired EGUs was appropriate and necessary. Because the EPA had adopted this

¹³ For context, CAA section 112(c)(9)(B) does not allow the EPA to delete a source category from the CAA section 112(c) list if any source in the category emits HAP in quantities that may cause a lifetime risk of cancer greater than 1-in-1 million to the most exposed individual.

interpretation in the December 2000 Finding and confirmed it in the MATS rulemaking, before now the agency had not evaluated the statute to determine how cost should be considered when determining whether regulation is appropriate. The EPA has now reevaluated its interpretation of CAA section 112(n)(1) to identify how cost considerations should be incorporated into this threshold listing determination. See “Legal Memorandum Accompanying the Proposed Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs)” (Legal Memorandum). In this Section, the EPA provides a summary of the legal conclusions relating to the consideration of cost in the appropriate finding. The Legal Memorandum lays out, in more detail, the interpretation of CAA section 112(n)(1)(A) that provides the basis for this proposed action. The EPA is requesting comment on the Legal Memorandum.¹⁴

In the Legal Memorandum, the EPA reevaluates the statute in light of the Supreme Court’s holding in *Michigan*. The EPA considers the purpose and scope of the 1990 amendments to CAA section 112, including section 112(n)(1), to determine the cost considerations generally relevant to HAP-related actions, the advantages of regulating HAP emissions from stationary sources, and a reasonable approach to weighing the costs with the other factors relevant to determining whether regulation of HAP emissions from EGUs is appropriate. See Legal Memorandum, pages 6–23.

The EPA’s evaluation of CAA section 112 leads us to conclude that the purpose of that section of the CAA is to achieve prompt, permanent and ongoing reductions in HAP emissions from stationary sources to reduce the hazards to public health and the environment inherent in exposure to such emissions, with the goal of limiting the risk to the most exposed and most sensitive members of the population. See Legal Memorandum, pages 6–13. To accomplish this goal, the statute requires as a starting point uniform levels of control from all sources in the same listed category or subcategory, and ongoing review to determine whether

additional reductions can be achieved to further reduce the volume of HAP emissions. *Id.* Thus, the EPA concludes that the benefit Congress sought in amending CAA section 112 was permanent and ongoing reductions in the volume of HAP emissions. *Id.* These general goals are relevant to the EPA’s evaluation of specific statutory provisions including the EGU specific requirements in CAA section 112(n)(1). See *New Jersey v. EPA*, 517 F.3d at 582 (rejecting the EPA’s argument that section 112(c)(9) does not apply to EGUs, and citing section 112(c)(6) as support for the conclusion that “where Congress wished to exempt EGUs from specific requirements of section 112, it said so explicitly.”).

The EPA has also evaluated the specific section under which the appropriate and necessary determination is made—CAA section 112(n)(1)—to further inform our interpretation of the role of cost in making the appropriate determination under section 112(n)(1)(A). See Legal Memorandum, pages 13–17. The studies required under CAA section 112(n)(1) focus on potential hazards to public health and the environment, including the potential hazards to the most sensitive members of the population. In addition, the statute requires the agency to evaluate available control technologies for HAP emissions from EGUs, and to specifically evaluate the cost of mercury controls. See CAA sections 112(n)(1)(A) and 112(n)(1)(B). Thus, cost is one of the several factors that the EPA must consider in addition to the other relevant factors identified in the statute when determining whether regulation of HAP emissions from EGUs is appropriate, but CAA section 112(n)(1) does not support a conclusion that cost should be the predominant or overriding factor. See Legal Memorandum, pages 13–17.

CAA section 112(n)(1)(A) also does not dictate the manner in which cost is to be considered in the appropriate finding. In fact, the sole mention of cost in CAA section 112(n)(1) is the direction in section 112(n)(1)(B) to consider the costs of mercury controls. The statute thus gives the EPA discretion to identify a reasonable approach to incorporating cost into the analysis required under CAA section 112(n)(1)(A). In addition, because section 112(n)(1)(A) is a listing provision, the EPA must focus on *whether* HAP emissions from EGUs collectively should be regulated, and not on the specific manner of regulation.¹⁵ Under the statutory

structure, this listing decision is to be made significantly before the 112(d) standards would be promulgated, and, therefore, it is reasonable for the EPA to consider what types of cost information would be available at that threshold stage when determining how to consider cost in the analysis. See Legal Memorandum, pages 19–21.

In determining whether it is appropriate to regulate HAP emissions from EGUs, the EPA concludes that it is reasonable to focus on whether the power sector can reasonably absorb the cost of compliance with MATS. The D.C. Circuit has previously provided general guidance on how to evaluate cost in the context of determining the reasonableness of New Source Performance Standards under section 111 of the CAA. The approach under CAA section 112 is somewhat different as section 112(d)(3) of the statute defines the minimum level of control based on levels that have been actually achieved by the best performing similar sources in the source category—a level deemed *per se* reasonable for other similar sources. Thus, the agency need not determine in the analysis the level of control that is technologically feasible and cost reasonable as is required when establishing standards under CAA section 111. Instead, the purpose of the cost analysis under CAA section 112(n)(1)(A) is to help evaluate whether the costs of regulation are reasonable when weighed against other relevant factors, most notably the identified hazards to public health and the environment from HAP emitted by EGUs that are reduced when the significant volume of HAP emission from EGUs is reduced. For EGUs, the reasonableness of the costs of CAA section 112(d) standards could be determined in part by an evaluation of this sector’s ability to perform its primary and unique function—the generation, transmission and distribution of electricity. As explained below, the EPA considered several different cost metrics to evaluate whether cost of compliance with MATS are reasonable.

The statute also does not specify how much weight should be given to cost relative to other relevant factors. It thus provides the EPA discretion to develop reasonable approaches to considering

source categories is established pursuant to CAA section 112(d)(2) for major stationary sources. In addition, the EPA determined in the Legal Memorandum that CAA section 112(d)(3) minimum stringency standards are technologically feasible and presumptively cost reasonable because the standards are based on existing sources in the same category or subcategory of sources. See Legal Memorandum, page 8 and Section III of this document.

¹⁴ Nothing in this document or the Legal Memorandum disturbs the EPA’s prior interpretations of the terms “appropriate” and “necessary” set forth in the proposed and final MATS rules, except to the extent they concluded that the EPA was not required to take cost into account when deciding whether regulation is “appropriate.”

¹⁵ As explained in the MATS record and the Legal Memorandum, the manner of regulation for listed

cost while taking into account the goals of the statute. Cost is but one of several factors the EPA must consider before it may add, pursuant to CAA section 112(n)(1)(A), EGUs to the list of source categories to be regulated under section 112. Specific pollutants were listed by Congress as HAP under CAA section 112 due to their inherently harmful characteristics, and this section instructs the EPA to reduce the risks to public health and the environment, including the risks to the most sensitive individuals in the population from those harms, by reducing the volume of such HAP emissions from stationary sources. Thus, the advantages of reducing identified hazards to public health and the environment must be considered and weighed against the costs or disadvantages, taking into account the statutory goals. *See* Legal Memorandum, pages 21–29.

The EPA also concludes in the Legal Memorandum that a benefit-cost analysis is not required to support a threshold finding that regulation is appropriate. However, to the extent a benefit-cost analysis is used to evaluate whether regulation of HAP emissions from EGUs is appropriate, it is important to account for the full range of benefits associated with the action, including benefits that cannot be monetized due to lack of data. The statute does not require the EPA to compare only the monetized HAP-specific benefits to the compliance costs to support the finding. Neither does the statute direct the EPA to consider only the HAP benefits of the rule and ignore co-benefits, if the control strategies employed achieve multi-pollutant reductions. Instead, the EPA concludes that such an analysis would appropriately evaluate all of the known consequences of the rule. The Legal Memorandum concludes that the benefit-cost analysis in the RIA that accompanied the final MATS presents a reasonable evaluation of the costs and benefits of the final MATS rule.

The legal interpretations summarized above, and explained in greater detail in the Legal Memorandum, provide the basis for the evaluation of cost and conclusions presented in the remainder of this document. The EPA is requesting comment on all aspects of the Legal Memorandum and all conclusions contained therein.

IV. Considerations of Cost

A. Introduction

This Section explains how the EPA has taken cost into account in evaluating whether regulation of coal- and oil-fired EGUs under section 112 of

the CAA is appropriate. As the EPA explains above, and in the Legal Memorandum, there is little guidance in CAA section 112 on how the EPA could or should consider cost when making the threshold finding under CAA section 112(n)(1)(A) and the EPA has substantial discretion in identifying appropriate metrics for considering cost. The EPA has evaluated costs in this Section primarily through a consideration of whether the cost of compliance to the power sector is reasonable.

In Section IV.B below, the EPA discusses how it evaluated the reasonableness of the direct and indirect costs of the final CAA section 112(d) standards. As discussed earlier and in the Legal Memorandum, the EPA has substantial discretion in identifying appropriate metrics for considering cost. In evaluating how to appropriately consider costs, the EPA was mindful of Congress' statement regarding the 1990 CAA Amendments: "Our goal . . . has been to promote the public health and welfare and the productive capacity of our nation. We have given EPA both the regulatory tools to accomplish cleaner air and the flexibility to protect our industrial and productive capacity."¹⁶ In the context of CAA section 112(n)(1), adherence to Congress' goal can be evaluated by considering whether the cost of addressing, through MATS, the significant public health and environmental hazards posed by emissions of HAP from EGUs is reasonable and whether those hazards can be addressed while protecting the "productive capacity" of the power sector (*i.e.*, without significant harm to the power sector's ability to perform its primary and unique function—the generation, transmission, and distribution of electricity.) In Section IV.B the EPA presents an evaluation of multiple metrics to determine the cost reasonableness of the CAA section 112(d) standards for EGUs.

The EPA has also identified other costs that help inform the agency's understanding of whether it is appropriate to regulate HAP emissions from EGUs. As discussed in the Legal Memorandum, the explicit reference to the cost of mercury controls in CAA section 112(n)(1)(B) and the reference to the availability of alternative control strategies in section 112(n)(1)(A) suggests that the EPA should consider the cost of controls for mercury and other HAP emitted from EGUs when determining whether regulation is

appropriate.¹⁷ The cost of the ARP is also worth noting in light of its relationship to the inclusion of CAA section 112(n)(1)(A) in the 1990 CAA amendments. Thus, in Section IV.C below, the EPA discusses briefly the cost of the ARP, the evolution of mercury controls and the reduction in the cost of such controls since the EPA issued the Mercury Study. The EPA also discusses the controls for other HAP emissions from EGUs.

Finally, while the EPA recognizes that cost is an important consideration in the determination of whether it is appropriate to regulate HAP emissions from EGUs, it is not the only consideration and CAA section 112(n)(1) does not support a conclusion that cost should be the predominant or overriding factor. As stated earlier, and detailed in the Legal Memorandum, the EPA must weigh the cost of compliance against other relevant factors—such as the advantages of regulation and achievement of statutory goals—in determining whether such consideration of cost causes the agency to alter its previous determination that it is appropriate to regulate HAP emissions from EGUs. This is discussed below in Section IV.D. As noted in Section I.C of this document, the public had ample opportunity to comment on all aspects of the MATS RIA, and the EPA responded to all of the significant comments.¹⁸ Although the EPA is not accepting comments on the methods applied in the MATS RIA, the agency requests comments on the use of the MATS RIA results as a way to consider cost in the CAA section 112(n)(1)(A) determination.

¹⁷ The EPA believes that it could have developed rough projections of the control technology costs of an eventual standard based on information obtained in the CAA section 112(n)(1) studies and general knowledge of the costs of controls at the time the agency made the appropriate finding. For example, the Mercury Study estimated the potential cost of mercury controls for EGUs and other sources, and the EPA could have attempted to provide similar cost estimates for the other HAP emissions from EGUs based on available information, including information in the Utility Study. However, the agency now has an updated and further refined cost estimate of the cost of compliance with the final MATS rule, and the EPA is using this cost information in this action because it was developed at the time the EPA reaffirmed the finding that regulation of HAP emissions from EGUs is appropriate and necessary. *See* U.S. EPA. 2011. *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*. Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA-452/R-11-011. Docket ID No. EPA-HQ-OAR-2009-0234-20131.

¹⁸ *See* pp. 477–660 of the EPA's *Responses to Public Comments on EPA's National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units*. Volume 2. Docket ID No. EPA-HQ-OAR-2009-0234-20126.

¹⁶ "A Legislative History of the Clean Air Act Amendments of 1990" (CAA Legislative History), Vol II, p. 3187.

B. Consideration of Cost to the Power Sector

1. Introduction

In light of the statutory ambiguity regarding how to consider cost in making the appropriate and necessary finding, the EPA has exercised the discretion granted to it and applies several metrics relevant to the power sector to determine whether the estimated cost of compliance with MATS is reasonable. The EPA has also considered the reasonableness of the direct and indirect costs of compliance with MATS and the power sector's ability to maintain performance of its primary and unique function—the generation, transmission, and distribution of electricity.

As explained below, the EPA considered direct and indirect costs at the sector level because of the interconnectedness of the electricity grid and the fact that most power companies own diverse inventories of power generating units, including coal- and oil-fired EGUs. In this Section, the EPA has applied a number of different analyses (metrics) to assess whether the power sector's costs of compliance with the CAA section 112(d) standard is reasonable. Each of these analyses independently support a conclusion that the estimated costs of compliance with MATS are reasonable.

In 2012, the EPA reaffirmed the appropriate and necessary finding and established CAA section 112(d) standards, and, as part of that rulemaking, the EPA estimated the cost of compliance with the proposed and final MATS standards pursuant to Executive Orders 12866 and 13563 and other applicable statutes and executive orders. In this Section, the EPA is evaluating whether the costs of compliance with MATS is reasonable, based on the RIA cost estimates.

In the following Sections, the EPA presents the methodology used to estimate annual compliance costs for MATS. The EPA then evaluates the estimates of the total annual costs of compliance with the standards, including a focus on estimates of total annualized costs of compliance compared to power sector retail sales and a comparison of capital expenditures required under MATS to overall power sector capital expenditures. We also present analyses of the impacts these costs are projected to have on the power sector and its consumers, including estimates of impacts on the average retail price of electricity and the characteristics of the units choosing to retire as a result of MATS.

2. Predicted Compliance Costs for MATS

In this and the following Sections, we present compliance cost and impact estimates from the MATS RIA for the year of 2015 in the broader historical context of power sector trends. The analyses demonstrate that the projected costs and impacts of MATS requirements are reasonable.

We focus on the 2015 impacts presented in the RIA because these results represent the first year of compliance with the MATS rule, and those compliance cost estimates would be the most relevant to the threshold determination. As discussed later, of the years analyzed in the MATS RIA, the compliance costs are highest in 2015, and thus we focus on it here as a representation of the maximum impact. The analyses in the final MATS RIA represented the best forecast of cost and impacts available to the EPA when MATS was promulgated.

In accordance with guidance issued by the Office of Management and Budget (OMB)¹⁹ and the EPA,²⁰ the EPA developed RIAs for the proposed²¹ and final²² MATS rulemakings. In the MATS RIAs, the compliance cost estimates were established using the Integrated Planning Model (IPM).²³ IPM, developed by ICF International, is a state-of-the-art, peer-reviewed dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. IPM provides forecasts of least-cost capacity expansion, electricity dispatch, and emission control strategies while meeting electricity demand and various environmental, transmission, dispatch, and reliability

constraints. The EPA has used IPM for over 2 decades to understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emission impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible using the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics. Notably, the model includes state-of-the-art estimates of the cost and performance of air pollution control technologies with respect to mercury and other HAP controls.²⁴

In the MATS RIA, the power sector's "compliance costs" are estimated in IPM as the change in electric power generation costs between a base case without MATS and a policy case where the sector complies with the HAP emissions limits in the final MATS. The base case provides a future projection of the power sector in the absence of MATS, and serves as the baseline against which projections under policy cases are compared. The policy case examined in the MATS RIA introduces the requirements of the rule as constraints on affected EGUs, which results in new projections of power sector outcomes under MATS. In simple terms, these compliance costs are an estimate of the increased expenditures by the entire power sector to comply with the EPA's requirements while continuing to serve a given level of electricity demand. Therefore, the projected compliance cost estimate is not limited to the increase in expenditures by those EGUs directly affected by MATS, nor does it account for the ability of many electricity producers to reduce the costs they bear by passing along their costs to consumers of electricity through higher electricity prices.²⁵

¹⁹ Office of Management and Budget. 2003. *Circular A-4: Regulatory Analysis*. Washington, DC. Available at: <http://www.whitehouse.gov/omb/circulars/a004/a-4.html>.

²⁰ U.S. EPA. 2010. *Guidelines for Preparing Economic Analyses*. EPA 240-R-10-001. National Center for Environmental Economics, Office of Policy Economics and Innovation. Washington, DC. December. Available at [http://yosemite.epa.gov/ee/epa/eeirm.nsf/vwAN/EE-0568-50.pdf/\\$file/EE-0568-50.pdf](http://yosemite.epa.gov/ee/epa/eeirm.nsf/vwAN/EE-0568-50.pdf/$file/EE-0568-50.pdf).

²¹ U.S. EPA. 2011. *Regulatory Impact Analysis of the Proposed Toxics Rule*. March 2011. Docket ID No. EPA-HQ-OAR-2009-0234-3051.

²² U.S. EPA. 2011. *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*. EPA-453/R-11-011. December 2011. Docket ID No. EPA-HQ-OAR-2009-0234-20131.

²³ Detailed IPM documentation and run files for MATS are available in the docket (see, for example, EPA-HQ-OAR-2009-0234-19996 and EPA-HQ-OAR-2009-0234-3071). The underlying data inputs to IPM continually evolve as the emissions profile of the power sector changes with time in response to control technology advances, environmental regulation, and economic influences, such as changes in fuel prices. The EPA provides information on, and documentation of, underlying assumptions and any changes to the IPM each time it is used in a regulatory context.

²⁴ See, for example, USEPA Base Case v.4.10 Documentation (EPA-HQ-OAR-2009-0234-3049) and Documentation Supplement for EPA Base Case v.4.10 MATS—Updates for Final Mercury and Air Toxics Standards (MATS) (EPA-HQ-OAR-2009-0234-19996).

²⁵ The MATS RIA does not clearly distinguish how much of the increased expenditures are incurred by owners of EGUs and how much are borne by consumers of electricity. Therefore, the \$9.6 billion in compliance costs are relevant to all participants in the U.S. economy, not just individuals that own EGUs. In addition, these compliance costs do not account for changes in profits for firm owners who supply inputs such as coal and natural gas to the electricity sector. The compliance costs for MATS are, in part, attributable to higher fuel prices due to higher fuel demand, particularly natural gas, which would likely increase the profits for those fuel producers. A more comprehensive assessment of costs that accounted for these net changes in profits and consumer welfare would also subtract the higher profits to

The EPA notes that the projected compliance cost estimate represents the incremental costs to the entire power sector to generate electricity, not just the compliance costs projected to be borne by coal-fired and oil-fired EGUs regulated under MATS. EGUs operate interdependently within a large and complex system. While the MATS requirements are directed at a subset of EGUs in the power sector, the compliance actions of the MATS-regulated EGUs will affect production costs and revenues of other units due to fuel and electricity price changes. Furthermore, EGUs are often owned and operated by firms with multiple generating sources, many of which are not subject to MATS requirements. Therefore, limiting the consideration of costs only to those expenditures incurred by EGUs directly regulated by MATS, and not the other costs expended by their owners, would provide an incomplete assessment of the costs of the rule. Thus, analyses that compare system-wide (or sector-level) compliance cost impacts of MATS to sector-level economic indicators are appropriate for considering whether the power sector can absorb compliance costs, and do so without diminishing its ability to supply electricity. This approach is also consistent with the EPA's analytical objective to evaluate as best as is reasonable and possible all consequences of economically significant regulatory actions.

Using IPM, the EPA estimated the emissions reductions and annual incremental costs resulting from MATS, including the costs of installing and operating additional pollution controls, investments in new generation capacity, shifts between or amongst various fuels, and other actions associated with compliance. The EPA estimated that, relative to the base case, the final MATS rule would reduce annual emissions of mercury by 75 percent, hydrogen chloride by 88 percent, and fine particulate matter (PM_{2.5}) (filterable PM is a surrogate for non-mercury metal HAP) by 19 percent from coal-fired EGUs greater than 25 megawatts (MW) projected for 2015. IPM was also used to estimate reductions of other pollutants that resulted from the application of the MATS emissions limits. The EPA projected sulfur dioxide (SO₂) emissions reductions of 41 percent and carbon dioxide (CO₂) reductions of one percent from coal-

fuel producers from the compliance costs. Similarly, such an assessment would also subtract from the compliance costs changes in tax payments by electricity producers, which are transfers rather than the use of real resources that have an opportunity cost to society as a whole.

fired EGUs greater than 25 MW in 2015, relative to the base case. The EPA projected that the annual incremental cost of final MATS would be \$9.6 billion in 2015.²⁶ The MATS RIA also reports estimates of compliance costs of \$8.6 billion and \$7.4 billion in 2020 and 2030, respectively. Compliance cost estimates are, therefore, highest in 2015. Incremental annual capital expenditures represent approximately \$2.4 billion of the \$9.6 billion in annual costs in 2015.²⁷ All costs in this and subsequent Sections are reported in 2007 dollars.

3. Annual Compliance Costs as a Percent of Power Sector Sales

We compare annual compliance costs to electricity sales at the power sector-level, often called a sales test. The sales test is a frequently used indicator of potential impacts from compliance costs on regulated industries.²⁸

Table 2 presents the value of retail electricity sales from 2000 to 2011, based on information from the U.S. Energy Information Administration (EIA).²⁹

²⁶ As described in the MATS RIA, IPM was used to estimate the compliance costs to the sector associated with applying MATS emissions limitations to coal-fired EGUs. The EPA did not use IPM, however, to estimate compliance costs to the sector associated with applying MATS emissions limitations to oil-fired steam boilers or to estimate monitoring, reporting, and recordkeeping (MR&R) costs for MATS-regulated EGUs. The cost of control for oil-fired steam boilers was estimated separately in the RIA, and then added to the IPM-based compliance costs for coal-fired unit emissions limitations. The cost of control for the oil-fired steam boilers was either the expenditures by these units to install pollution controls or increased expenditures of switching to lower-emitting fuels. Broken into the three components, IPM-based compliance costs were \$9.4 billion, the separately estimated cost of control for oil-fired steam boilers was \$56 million, and MR&R costs were \$158 million, totaling the \$9.6 billion compliance cost estimate. Note the sum does not total exactly because of independent rounding.

²⁷ The \$2.4 billion increase in capital expenditures under MATS is found by taking the difference between capital expenditures in the IPM MATS policy case and the capital expenditures in the IPM MATS base case. These values are found in Table 15 of "MATS Policy Case Summary Report" (Docket ID No. EPA-HQ-OAR-2009-0234-19985) and Table 15 in "MATS Base Case Summary Report" (Docket ID No. EPA-HQ-OAR-2009-0234-19984).

²⁸ For example, the sales test is often used by the EPA when evaluating potential economic impacts of regulatory actions on small entities. In the context of a small entity analysis, an evaluation of the change in profits to owners is likely the best approach to assessing the economic burden to owners from a regulatory action. In the analysis provided in this section, the sum of the change in profits to EGU owners in the entire sector and the increased electricity bills of consumers of electricity is compared to total revenues. Data limitations prevent solely analyzing profit changes to EGU owners as a result of MATS in this proposed supplemental finding.

²⁹ We do not include figures for years after 2011 in this and later comparisons as this information

TABLE 2—RETAIL ELECTRICITY SALES, ALL SECTORS, 2000 TO 2011
[2007 dollars]

Year	Revenue from retail sales (billions of 2007 dollars)
2000	277.2
2001	287.5
2002	285.5
2003	291.5
2004	295.0
2005	315.3
2006	335.2
2007	343.7
2008	356.6
2009	343.9
2010	354.8
2011	349.6

Source: U.S. Energy Information Administration, Form-826 Detailed Data, <http://www.eia.gov/electricity/data/eia826/>, accessed 10/14/15.

Note: Dollar figures adjusted to 2007 dollars using the Gross Domestic Product—Implicit Price Deflator, <https://research.stlouisfed.org/fred2/series/GDPDEF>, accessed 10/14/15.

Revenues from retail electricity sales increased from \$277.2 billion in 2000 to a peak of \$356.6 billion in 2008 (an increase of 29 percent during this period). As would be expected, the general increase in sales (in dollar terms) over this time period is partly due to increases in electricity sales (in electricity sold) and increases in prices over the same time period. The \$9.6 billion in annual compliance costs of MATS projected for 2015 would represent about 2.7 percent of 2011 power sector revenues from retail electricity sales. If retail sales were to return to their 2008 peaks, the annual compliance costs would also represent about 2.7 percent of sales. If retail electricity sales were to decline to 2000 levels, the estimated annual compliance costs for MATS would represent approximately 3.5 percent of retail sales. Thus, the projected annual compliance costs of MATS represent a small fraction of the value of overall sales.

After considering the potential costs of MATS in light of power sector sales, the EPA concludes that the costs to the power sector are reasonable. As noted above, the EPA is not accepting comments on the methods applied in the MATS RIA, but rather the agency requests comments on the use of incremental compliance costs from the MATS RIA results as a way to consider costs in the CAA section 112(n)(1)(A) determination.

would not have been available during the development of the MATS RIA.

4. Annual Compliance Capital Expenditures Compared to the Power Sector's Annual Capital Expenditures

Another way in which cost can be evaluated is by comparing the annual capital expenditures required by MATS to the range of variation in capital expenditures from year to year. Capital costs represent largely irreversible investments for firms that must be paid off regardless of future economic conditions, as opposed to other important variable costs, such as fuel costs, that may vary according to economic conditions and generation needs. Table 3 presents two sets of estimates for trends in the annual

capital expenditures by the electric power sector. This information informs the second metric used to consider the costs of MATS to the power sector, namely a ratio of annual capital expenditures estimated to be needed for MATS compliance to historical power sector-level overall capital expenditures.

For power sector-level capital expenditures, the EPA relies on two sets of information. The first set of information is from the U.S. Census Bureau's Annual Capital Expenditures Survey. The second set of information is from information compiled by SNL, a private sector firm that provides data and analytical services. While each dataset has limitations, the estimates

from each correspond to one another reasonably well. The annual sector-level capital expenditures reported by SNL are generally lower than the information from the Census Bureau. This is in part because SNL captures information on capital expenditures from Securities and Exchange Commission (SEC) filings, which are submitted by most but not by all entities in the power sector, whereas the U.S. Census Bureau's estimate of capital expenditures in the power sector is intended to capture capital expenditures for all entities in the power sector. For this reason, we present both sets of information to better depict capital expenditures in the power sector.

TABLE 3—TOTAL CAPITAL EXPENDITURES FOR THE ELECTRIC POWER, GENERATION, TRANSMISSION, AND DISTRIBUTION SECTOR, 2000 TO 2011

Year	Capital expenditures collected by SNL from SEC filings ¹		Capital expenditures based on U.S. census bureau annual capital expenditures survey ²	
	Capital expenditures (billions of 2007 dollars)	Change from previous year (billions of 2007 dollars)	Capital expenditures (billions of 2007 dollars)	Change from previous year (billions of 2007 dollars)
2000	51.8		62.5	
2001	70.1	18.2	85.9	23.4
2002	56.4	– 13.6	66.4	– 19.6
2003	43.8	– 12.6	52.7	– 13.7
2004	40.4	– 3.4	45.0	– 7.7
2005	46.7	6.3	50.0	5.0
2006	57.6	10.9	61.6	11.6
2007	66.9	9.3	73.9	12.3
2008	78.1	11.2	83.5	9.6
2009	76.6	– 1.5	87.9	4.4
2010	75.1	– 1.5	79.8	– 8.2
2011	79.6	4.5	79.2	– 0.6

¹ Source: SNL, accessed 10/14/15.

² Source: U.S. Census Bureau, Annual Capital Expenditures Survey, <http://www.census.gov/econ/aces/index.html>, accessed 10/14/15.

Note: Dollar figures adjusted to 2007 dollars using the Gross Domestic Product—Implicit Price Deflator, <https://research.stlouisfed.org/fred2/series/GDPDEF>, accessed 10/14/15. Changes may not sum due to independent rounding.

Capital expenditures generally increase from 2000 to 2011 but not in a linear fashion, partly a result of increased demand. In 2000, capital expenditures for the electric power sector are estimated to be \$51.8 billion (based on SNL) and \$62.5 billion (based on Census). Capital expenditures for this sector reached a low in 2004 at \$40.4 billion (based on SNL) and \$45.0 billion (based on Census), rising to their peak in 2011 at \$79.6 billion (based on SNL) or in 2009 at \$87.9 billion (based on Census).

The final MATS RIA estimated the incremental capital expenditures to be \$2.4 billion for 2015, which represent about 3.0 percent of 2011 power sector-level capital expenditures using either SNL or Census information.³⁰ If power

sector-level capital expenditures declined to 2004 levels, the incremental capital expenditures estimated for MATS would represent about 5.9 percent (based on SNL) or 5.3 percent (based on Census).

The increased capital expenditures estimated to be required under MATS represent a small fraction of the power sector's overall capital expenditures in recent years. Additionally, the EPA notes that the projected \$2.4 billion in incremental capital costs is well within the range of annual variability over the 2000–2011 period. During this period, based on the Census information for example, the largest year-to-year

capital expenditures is the change in capital expenditures for the entire sector as a result of the MATS emissions limitations (that is, above those estimated in the base case). As a result, the estimate includes the change in capital expenditures from installing pollution controls and the capital expenditures of new generating technologies in the MATS policy case relative to the base case.

decrease in power sector-level capital expenditures was \$19.6 billion (from 2001 to 2002) and the largest year-to-year increase in power sector-level capital expenditures was \$23.4 billion (from 2000 to 2001). This wide range indicates substantial year-to-year variability in industry capital expenditures, and the projected \$2.6 billion increase in capital expenditures in 2015 projected under MATS falls well-within this variability. Similar results are found using the SNL information.

After considering the potential impacts of MATS on industry capital expenditures, the EPA concludes that the costs to the power sector are reasonable. As noted above, the EPA is not accepting comments on the methods applied in the MATS RIA, but rather the agency requests comments on the use of incremental compliance expenditures from the MATS RIA results as a way to

³⁰ As noted above in this Section, the incremental annual capital expenditures represent approximately \$2.4 billion of the \$9.6 billion in annual compliance costs in 2015. The incremental

consider costs in the CAA section 112(n)(1)(A) determination.

5. Impact on Retail Price of Electricity

In electricity markets, costs imposed on utilities can be fully or partly passed through to consumers, which can result in increased retail electricity prices. Evaluating the projected effect on retail electricity prices against the variations in electricity prices from year to year therefore provides an additional way to evaluate the “cost” or impact of MATS, in this instance on electricity consumers, instead of on owners of

EGUs in the power sector. Using data from the EIA, Table 4 presents trends in the average retail price of electricity for all sectors (residential, commercial, industrial, transportation, and other sectors) from 2000 to 2011. This information informs the comparison of the percent increase in retail electricity prices projected to result from MATS for 2015 to historical levels of variation in electricity prices.

While compliance costs and electricity prices are evaluated independently when considering whether it is appropriate to regulate

steam-fired EGUs under MATS, they are not independent or separable economic indicators. The cause of higher electricity prices is the increase in expenditures by the power sector described earlier. Therefore, the electricity price impacts and the associated increase in electricity bills by consumers are not costs that are in addition to the compliance costs described earlier in this section, and, in fact, to the extent the compliance costs are passed on to electricity consumers, the costs to the EGU owners in the power sector are reduced.

TABLE 4—AVERAGE RETAIL PRICE OF ELECTRICITY, ALL SECTORS, 2000 TO 2011

Year	Average electricity retail price (cents per kilowatt-hour in 2007 dollars)	Change from previous year (cents per kilowatt-hour in 2007 dollars)
2000	8.10	
2001	8.47	0.38
2002	8.24	0.23
2003	8.35	0.11
2004	8.31	0.04
2005	8.61	0.30
2006	9.14	0.52
2007	9.13	−0.01
2008	9.55	0.42
2009	9.56	0.01
2010	9.45	−0.11
2011	9.33	−0.13

Source: U.S. Energy Information Administration, Electricity Data Browser, <http://www.eia.gov/electricity/data/browser>, accessed 10/14/15.

Notes: Dollar figures adjusted to 2007 dollars using the Gross Domestic Product—Implicit Price Deflator, <https://research.stlouisfed.org/fred2/series/GDPDEF>, accessed 10/14/15. Changes may not sum due to independent rounding.

The final RIA estimated that MATS would result in relatively small changes in the average retail price of electricity. Retail electricity prices for 2015 were projected to increase from 9.0 cents per kilowatt-hour on average in the base case to 9.3 cents per kilowatt-hour with MATS, an increase of about 3.1 percent. The regional price increases projected for MATS ranged from 1.3 percent to 6.3 percent. Four regions out of the 13 regions for which retail prices were estimated (encompassing all lower 48 states) were projected to have a higher percentage increase in prices than the national average increase of 3.1 percent. However, each of these four regions also has a price that is lower than the national average.

The EPA notes that the projected 0.3 cents per kilowatt-hour increase in national average retail electricity price under MATS is well within the range of annual variability over the 2000–2011 period. During this period, based on the EIA information, the largest year-to-year decrease in national average retail electricity price was −0.2 cents per kilowatt-hour (from 2001 to 2002) and the largest year-to-year increase in national average retail electricity price

was 0.5 cents per kilowatt-hour (from 2005 to 2006). This wide range indicates substantial variability, and the 0.3 cents per kilowatt-hour increase in the national average retail electricity price under MATS is well within normal historical fluctuations.

After considering the potential impacts of MATS on retail electricity prices, the EPA concludes that the estimated increase in electricity prices is within the historical range and is reasonable. In addition, because the increase in electricity prices is in part due to the ability of many EGUs to pass their costs on to consumers, the estimated MATS compliance costs discussed above are in fact less of a burden on owners of EGUs in the power sector. As noted above, the EPA is not accepting comments on the methods applied in the MATS RIA, but rather the agency requests comments on the use of average retail price increases from the MATS RIA results as a way to consider costs in the CAA section 112(n)(1)(A) determination.

6. Impact on Power Sector Generating Capacity

The EPA believes the statutory concern with the cost of compliance expressed in CAA section 112(n)(1) can reasonably be tied to a concern with the ability of EGUs to comply with the ARP and other CAA requirements, as well as CAA section 112(d)(3) standards, while at the same time maintaining a reliable supply of electricity.³¹ Therefore, the EPA recognized the importance of considering the ability of EGUs to comply with MATS and maintain a reliable supply of electricity.

The MATS RIA reported projected net changes in generation capacity under MATS, as compared to the base case. Relative to the base case, about 4.7 gigawatts (GW) of additional coal-fired capacity was projected to retire by 2015

³¹ The EPA generally uses the term “reliability” to refer to the ability to deliver the resources to the projected electricity loads so the overall power grid remains stable, and the term “resource adequacy” generally refers to the provision of adequate generating resources to meet projected load and generating reserve requirements in each region.

as the result of MATS.³² These projected retirements reflect less than two percent of all coal-fired generation capacity projected in 2015 (310 GW in the base case without MATS) and less than 0.5 percent of total projected capacity (1,026 GW in the base case without MATS). As with the estimate of

compliance costs and capital expenditures projected by IPM and described above in this Section, this projection was based on assumptions about a number of factors that affect the power sector (e.g., other available capacity, demand for electricity, fuel supply and fuel prices) and unit

attributes (e.g., efficiency).³³ In addition, as Table 6 shows, the units that were projected to retire under MATS are, on average, older, smaller in terms of capacity, and less frequently used as indicated by capacity factors.

TABLE 6—CHARACTERISTICS OF COVERED OPERATIONAL COAL UNITS AND ADDITIONAL COAL UNITS PROJECTED TO RETIRE UNDER MATS, 2015

	Average age (years)	Average capacity (MW)	Average capacity factor in base case (%)
Retire	52	129	54
Operational	43	322	71

Source: Integrated Planning Model run by the EPA, 2011. Table 3–7 in final MATS RIA.

This analysis indicates that the vast majority of the generation capacity in the power sector directly affected by the requirements of MATS would be able to absorb the anticipated compliance costs and remain operational. In order to ensure that any retirements resulting from MATS would not adversely impact the ability of affected sources and electric utilities from meeting the demand for electricity, the EPA conducted an analysis of the impacts of projected retirements on electric reliability. These resource adequacy analyses found that reserve margins could be maintained over a three-year MATS compliance period indicating that reliability could be maintained as the power sector complied with MATS.³⁴

After considering the potential impacts of MATS on power sector generation capacity, the EPA concludes that the costs to the power sector are reasonable. As noted above, the EPA is not accepting comments on the methods applied in the MATS RIA, but rather the agency requests comments on the use of the MATS RIA results as a way to consider costs in the CAA section 112(n)(1)(A) determination and on the analyses (metrics used to assess whether the power sector's cost of compliance with the CAA section 112(d) standards are reasonable).

7. Conclusions of Considerations of Costs to Power Sector

In this Section, the EPA considers the costs of MATS to the power sector from a variety of perspectives. First, the EPA

estimates that the total projected cost of the MATS rule to the power sector in 2015 represents between 2.7 and 3.5 percent of annual electricity sales when compared to years from 2000 to 2011, a small fraction of the value of overall sales. Second, the EPA demonstrates that the projected capital expenditures in 2015 represent between 3.0 and 5.9 percent of total annual power sector capital expenditures when compared to years leading up to the finalization of the MATS rule. This investment by the power sector comprises a small percentage of the sector's historical annual capital expenditures on an absolute basis and also falls within the range of historical variability in such capital expenditures. Third, the EPA finds the projected average retail price increases are within the range of historical variability as well as lower than their peak on an absolute basis. The EPA has compared the projected national average retail electricity price for 2015 under MATS to the period from 2000 to 2011 and has shown that the projected increase in electricity rates of 0.3 cents/kWh for 2015 represents an increase of 3.1 percent, well within the range of retail price fluctuations over the 2000 to 2011 period. Finally, this analysis indicates that the vast majority of the generation capacity in the power sector would be able to absorb the anticipated compliance costs and remain operational and that the generating capacity the EPA estimated would retire as a result of the rule was generally older and less efficient than the capacity projected to operate.

The EPA judges each of these analyses to be appropriate bases for evaluating whether the costs to the power sector are reasonable. Having performed these analyses independently, the EPA concludes that every one of them supports its conclusion that costs are reasonable.

C. Other Costs

1. Introduction

In addition to the cost considerations described in Section IV.B above, the EPA considered the cost of mercury controls consistent with the requirement in CAA section 112(n)(1)(B), and the cost of controls for other HAP emissions from EGUs. In addition, we discuss the cost of implementing the ARP because of its relationship to the inclusion of section 112(n)(1)(A) in the 1990 CAA Amendments. Below we first address the ARP and then the costs of mercury and other controls.

2. Cost of the Acid Rain Program (ARP)

As explained above and in the MATS record, section 112(n)(1)(A) was added to the CAA in 1990 along with other significant revisions to section 112, and that provision requires the EPA to conduct the Utility Study and determine the hazards to public health reasonably anticipate to occur after imposition of the other requirements of the CAA. In addition to significantly revising section 112, the 1990 amendments to the CAA included the utility specific ARP. The ARP was established with the goal of reducing emissions of SO₂ and nitrogen oxides (NO_x) from the power sector, and

³² In this analysis, changes in generation capacity levels should be viewed as "net" changes as some units that retire from service in the base case do not do so in the MATS policy case.

³³ A number of these factors have changed since promulgation and as a result there were additional

retirements that are not directly attributed to MATS. The EPA's projections under MATS are based on information available at the time of MATS promulgation.

³⁴ U.S. EPA. 2011. *Resource Adequacy and Reliability in the Integrated Planning Model*

Projections for the MATS Rule, http://www3.epa.gov/ttn/atw/utility/revised_resource_adequacy_tsd.pdf, Docket ID No. EPA-HQ-OAR-2009-0234-19997.

there was an expectation that compliance with the ARP could result in widespread installation of control technologies that would also lead to ancillary or co-benefit reductions in HAP emissions.³⁵ The ARP was also projected to be costly—estimates of the cost of the program ranged from \$6 to \$9 billion per year (2000 dollars).³⁶ Notably, the ARP has been extremely successful in reducing emissions of SO₂ and NO_x from the utility power sector, and the cost of the ARP has been shown to be much less than what was initially estimated (up to 70 percent lower than initial estimates).³⁷ In addition, the compliance choice to not use scrubbers reduced the cost of the ARP and significantly reduced the co-benefit reductions in HAP emissions that would have occurred if more EGUs installed SO₂ scrubbers. As a result, in both 2000 when the EPA made its initial finding and in 2011 when it reaffirmed the finding that it is appropriate and necessary to regulate HAP from EGUs, those sources were still significant emitters of HAP, and almost all EGUs are major sources of HAP.

3. Consideration of the Cost of HAP Control Technologies

As described below, the EPA first considers the cost of mercury control technologies, consistent with CAA section 112(n)(1)(B), focusing on information available at the time the agency issued the Mercury Report through the time the EPA reaffirmed the appropriate and necessary finding in 2011. The EPA then considers the cost of control technologies for non-mercury HAP, and the changes in those costs over time.

The Mercury Study estimated the potential cost of mercury controls for EGUs and other sources,³⁸ and the

agency updated and further refined the mercury control cost estimate information in the RIA conducted for the final MATS rule.³⁹ The EPA also estimated the cost of controls for other HAP in the RIA. These analyses show that mercury control is more effective and less costly than initially estimated in 1997. The cost of non-mercury HAP control has also generally decreased since 1990.

a. Cost of Technologies for Control of Mercury Emissions

Pursuant to CAA section 112(n)(1)(B), the EPA completed the peer-reviewed Mercury Study in 1997, and it considered, among other things, the availability and cost of mercury controls. The EPA used the findings in the Mercury Study to develop the mercury-related findings contained in the Utility Study.

Based on data available at the time, detailed estimates of mercury control costs were developed for several model plants that represented electric power generation at coal-fired power plants. For the EGUs, the Mercury Study evaluated the costs of activated carbon injection and carbon filter beds at model plants with different pre-existing controls. The Mercury Study also described the potentially significant co-benefit control of mercury emissions by conventional SO₂ scrubbers and PM controls. At the time the Mercury Study was developed, mercury controls for utility boilers were still in the research, development and pilot program phase. The Mercury Study concluded that full-scale emission tests were needed and that the presented cost estimates were highly uncertain. The Mercury Study also noted that significant research on mercury emission control was underway and concluded that there were strong incentives for technology innovation and that the development of more cost-effective controls was likely. Because the EPA did not incorporate consideration of cost into the December 2000 Finding, no conclusions were reached at that time regarding whether the costs of the technologies outlined in the Mercury Study were reasonable for purposes of the mercury reductions that could be achieved.

The agency also considered alternative control strategies that were

available and effective in reducing HAP emissions from EGUs pursuant to CAA section 112(n)(1)(A). In fact, in the December 2000 Finding, the EPA stated that “the application of technologies used to control mercury emissions in conjunction with technologies used to control other pollutants, an approach called multi-pollutant control, can substantially reduce or offset the costs of HAP control.” 65 FR 79825, at 79828 (December 20, 2000). The EPA also discussed new methods in development to adsorb mercury onto injected particles (sorbents) so that the mercury could be more readily removed by PM controls. *Id.* at 79829. While the EPA did not explicitly consider costs in the December 2000 Finding, the inclusion of this information demonstrates that the EPA was mindful even then of mercury controls and associated costs.

The EPA similarly concluded in the MATS rule that there were available mercury controls (76 FR 25014), and the record reflects that mercury control costs have declined considerably since 2000.⁴⁰ In fact, the mercury sorbents discussed in the Mercury Study and the December 2000 Finding are now routinely used and newer and more effective mercury sorbents and other control strategies have been developed prior to and during the MATS rulemaking process.

b. Cost of Technology for Control of Non-Mercury HAP

The EPA considered the cost of controls for the non-mercury metal, acid gas, and organic HAP. In 1990, the types and costs of control technologies were generally known (e.g., PM controls (bag-houses and electrostatic precipitators) were the best controls for non-mercury metal HAPs and SO₂ scrubbers were the best controls for acid gas HAP, and the costs of those controls were known in 1990). CAA section 112(n)(1)(A) thus reasonably required the EPA to “develop and describe . . . alternative control strategies for [HAP] emissions which may warrant regulation under this section”,⁴¹ but did not require the EPA to consider the cost of such alternative controls. In the Utility Study, the EPA developed and described many pre- and post-combustion controls, both proven and being developed, for HAP

³⁵ For example, flue gas scrubbers that control SO₂ can also be effective at controlling acid gas HAP such as hydrogen chloride, hydrogen fluoride, and selenium oxide. Note, however, that NO_x controls are not effective at directly controlling HAP (though selective catalytic reduction units can promote improved mercury control in scrubbers).

³⁶ U.S. EPA Clean Air Markets Div., 2005, *National Acid Precipitation Assessment Program Report to Congress 2005: An Integrated Assessment*, National Science and Technology Council, Washington, DC; Note: These estimates would be approximately \$7 to \$11 billion in 2007 dollars using a GDP deflator.

³⁷ U.S. EPA Clean Air Markets Div., 2011, *National Acid Precipitation Assessment Program Report to Congress 2011: An Integrated Assessment*, National Science and Technology Council, Washington, DC.

³⁸ At the time the Mercury Study was developed, mercury controls for utility boilers were still in the research, development and pilot program phase. The Mercury Study concluded that full-scale emission tests were needed and that the presented cost estimates were highly uncertain. The Mercury

Study also noted that significant research on mercury emission control was underway and concluded that there were strong incentives for technology innovation and that the development of more cost-effective controls was likely.

³⁹ U.S. EPA. 2011. *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*. Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA-452/R-11-011. Docket ID No. EPA-HQ-OAR-2009-0234-20131.

⁴⁰ For example, see Docket ID No. EPA-HQ-OAR-2009-0234-20232.

⁴¹ The EPA states in the Utility Study that “[t]he HAPs of concern include the trace elements identified in chapter 5 as potential health risks. These consist of arsenic, cadmium, chromium, lead, manganese, mercury, and nickel; dioxins and furans (due to the toxicity of the organic chemical); and HCl [hydrogen chloride] and HF [hydrogen fluoride] (due to the estimated emission quantities of the compounds).” Utility Study, 13-1.

emissions, and many of those control approaches are in use today at other HAP sources to reduce the cost of compliance with CAA section 112(d) standards. The EPA believes that many EGUs will use these approaches to reduce the cost of compliance with MATS.

Concerning the cost of non-mercury controls, we considered flue gas desulfurization (FGD) controls that can effectively reduce acid gas HAP and can also reduce mercury and other non-mercury HAP to varying degrees based in part on control configuration (e.g., some NO_x controls facilitated the removal of mercury with a wet scrubber). The cost to reduce acid gas HAP using SO₂ controls has declined over time with the increased use of alternative technologies such as spray drier absorber and dry sorbent injection.

D. Incorporating Cost Into the Appropriate Finding

In response to the Supreme Court's holding in *Michigan* that the EPA erred in concluding that it was appropriate and necessary to regulate EGUs without considering cost, the EPA has now evaluated cost. The EPA must now, because it has already determined that HAP emissions from EGUs present significant hazards to public health and the environment, consider its conclusions regarding the cost of MATS in light of other factors relevant to the appropriate determination. Other relevant factors include the EPA's prior conclusions that HAP emissions from EGUs pose significant hazards to public health and the environment that will not be addressed through imposition of the other requirements of the CAA and that there are controls available to reduce HAP emissions from EGUs. The EPA must also consider its prior conclusion that EGUs are by far the largest remaining source of mercury, selenium, hydrogen chloride, and hydrogen fluoride emissions, and a major source of metallic HAP emissions including arsenic, chromium, nickel, and others,⁴² and that MATS will significantly reduce EGU emissions of many HAP. The EPA has estimated that MATS would reduce annual emissions from EGUs of mercury by 75 percent, hydrogen chloride (a surrogate for all acid gas HAP) by 88 percent, and PM_{2.5} (filterable PM is a surrogate for all non-mercury metal HAP) by 19 percent.⁴³

These conclusions, contained in the December 2000 Finding and the 2011 MATS rule⁴⁴ were not affected by the Supreme Court decision in *Michigan*. Instead, the Supreme Court concluded that the appropriate finding could not be made without also considering cost. *Michigan*, 135 S.Ct. at 2711.

The EPA has now evaluated cost and considered cost in light of the other factors relevant to determining whether regulation of HAP emissions from EGUs is appropriate. Based on a consideration of these factors, the EPA concludes that the consideration of cost does not cause us to alter our determination that regulation of HAP emissions from EGUs is appropriate.

The EPA concludes above that the direct and indirect costs to the power sector to comply with the final MATS standards based on several different metrics. The EPA also concludes above that the costs of compliance with the CAA section 112(d) standards established in MATS are reasonable and do not jeopardize the power sector's ability to perform its primary and unique function—the generation, transmission and distribution of electricity.

The EPA has considered the conclusion that the costs of compliance with the final MATS rule are reasonable in conjunction with the other relevant factors to determine whether the cost of regulation causes us to conclude that, despite the advantages of regulation such as the progress regulation will make toward reducing the identified hazards to public health, it would not be appropriate to regulate HAP emissions from EGUs. Specifically, the EPA considered the cost in light of the findings that mercury and non-mercury HAP from EGUs pose significant hazards to public health and the environment that will not be addressed through imposition of the other requirements of the CAA. See Section II of this document, the December 2000 Finding, and the MATS record. The EPA also considered the fact that coal- and oil-fired EGUs are the predominant anthropogenic source in the U.S. of several listed HAP, including mercury, hydrogen chloride, selenium, and hydrogen fluoride, and all but a handful of EGUs are major sources of HAP.

The EPA also considered the purpose of CAA section 112 to achieve prompt, permanent and ongoing reductions in the volume of HAP emissions that pose identified or inherent hazards to public health and the environment to reduce

the risks posed by such emissions, including risks to the most exposed and most sensitive members of the population. The EPA considered the fact that absent regulation of HAP emissions from EGUs, such units would continue to emit significant volumes of HAP emissions without a need to reduce or even monitor such emissions. This is particularly problematic for persistent HAP such as mercury, which, once emitted, can be re-emitted in the future, and as a result continue to contribute to mercury deposition and associated health and environmental hazards.⁴⁵ The EPA also considered the fact that the statute contemplates that all major sources of HAP will be subject to standards and that all listed sources will be evaluated every 8 years to determine if additional reductions in HAP emissions can be achieved at a reasonable cost, based on the availability of new controls or work practices. The statutory structure generally supports the regulation of all significant sources of HAP emissions, and the EPA has demonstrated that HAP are emitted in significant volumes by EGUs and such emissions have been determined to pose ongoing hazards to public health and the environment.

Having considered all of the relevant factors, including cost, the EPA finds that the cost of compliance with CAA section 112(d) standards does not cause us to alter our determination that regulation of HAP emissions from EGUs is appropriate. Numerous independent metrics support the conclusion that MATS, the regulation promulgated by the EPA to address HAP emissions from EGUs, is reasonable. MATS makes significant progress toward implementing the statutory goals of reducing the inherent hazards associated with HAP emissions and to reduce the risks posed by such emissions, including risks to the most exposed and most sensitive members of the population. In light of the meaningful progress MATS makes towards the important statutory objectives, and the EPA's conclusion that its associated costs are reasonable and will not affect the power sector's ability to continue supplying reliable power, the EPA concludes that it is appropriate to regulate HAP emissions from EGUs after considering cost.

Moreover, many of the congressional concerns related to costs and regulatory burden on the power sector, which led to the inclusion of section 112(n)(1) in

⁴² See Section II of this document and *Emissions Overview: Hazardous Air Pollutants in Support of the Final Mercury and Air Toxics Standard*, Docket ID No. EPA-HQ-OAR-2009-0234-19914.

⁴³ See Section IV.B.2 of this document and 77 FR 9424.

⁴⁴ December 2000 Finding, 65 FR 79825-31; Proposed MATS, 76 FR 24976-25020; Final MATS, 77 FR 9304-66.

⁴⁵ EGUs have emitted many hundreds of tons of mercury into the environment and those emissions will continue to pose hazards to public health and the environment into the future. 76 FR 25015.

the CAA, have been mitigated by more recent developments and consideration of these developments further supports the EPA's proposed conclusion. The EPA is expressly required to consider the cost of mercury controls in CAA section 112(n)(1)(B). The EPA has done so and determined that the estimated cost of mercury control has decreased significantly since 1997 when the EPA issued the Mercury Study. In the MATS rule, the EPA determined that there were available mercury controls (76 FR 25014), and the record reflects that mercury control costs have further declined since 2000.⁴⁶ In fact, the mercury sorbents discussed in the Mercury Study and the December 2000 Finding are now routinely used and new, more effective mercury sorbents and other control strategies have been developed prior to and during the MATS rulemaking process. The decreased cost of mercury controls and further supports our conclusion that consideration of cost does not cause us to alter our conclusion that it is appropriate to regulate HAP emissions from EGUs.

Finally, the EPA considered the fact that CAA section 112(d) ensures that the MACT floor level of control is technologically feasible and presumptively cost reasonable because it is based on the level of control actually achieved by existing sources in the same category or subcategory. See Legal Memorandum, Section III. In addition, while the statute requires a minimum level of control, the EPA maintains discretion under CAA section 112(d) to minimize the cost of compliance, for example, through subcategorization and emissions averaging. See December 2000 Finding, 65 FR 79830. The inherent reasonableness of MACT floor standards and the flexibility included in the standard setting process further support the EPA's proposed supplemental finding.

By adding cost considerations into the EPA's evaluation of whether regulation of HAP emissions from EGUs is appropriate, the EPA has corrected the deficiency identified by the Supreme Court in *Michigan*. Now, having considered cost and for all of the reasons explained above, the EPA is proposing this supplemental finding that, as the costs imposed by MATS are reasonable, it is appropriate for the EPA to regulate HAP emissions from EGUs in light of the meaningful progress the rule makes toward achieving key statutory goals and reducing the previously

identified significant hazards to public health and the environment. In sum, the significant advantages of regulating these emissions outweigh the costs of regulation.

V. Consideration of the Benefit-Cost Analysis in the MATS RIA

A. Introduction

As discussed above and in the Legal Memorandum, the EPA has discretion to determine the manner in which to consider cost under CAA section 112(n)(1). The EPA does not interpret CAA section 112(n)(1)(A) as requiring a formal benefit-cost analysis in which benefits are monetized and compared against the monetary costs of an action. Further, it is the EPA's judgment that a formal, monetized benefit-cost analysis is not the preferred approach for weighing the advantages and disadvantages of regulating HAP emissions from EGUs. See Section IV.D (setting forth the EPA's preferred approach to incorporating cost in the appropriate finding). However, a formal benefit-cost analysis was conducted in accordance with all relevant guidance and is presented in the final MATS RIA. In this Section, the EPA provides background on the benefit-cost approach and considers the results of the benefit-cost analyses developed for MATS. As explained herein, the final MATS RIA demonstrates that the benefits of the rule significantly outweighed the costs of the rule and thus fully and independently supports the EPA's proposed supplemental finding.

As noted in Section I.C of this document, the public had ample opportunity to comment on all aspects of the MATS RIA, including the benefits analysis, and the EPA responded to all of the significant comments.⁴⁷ Although the EPA is not accepting comments on the methods applied in the MATS RIA, the agency requests comments on the use of the MATS RIA results as a way to consider costs in the CAA section 112(n)(1)(A) determination.

B. Background on Benefit-Cost Analyses

The EPA developed RIAs for both the proposed and final MATS rule pursuant to Executive Orders 12866 and 13563, as well as other applicable statutes and executive orders. Among other requirements, these executive orders require agencies to assess the costs and

benefits of significant regulatory actions with the recognition that some impacts are difficult to quantify. Agencies are also required to make a reasoned determination that the benefits of an action justify its costs. The final MATS RIA met these requirements and followed all applicable guidance documents by closely examining all of the important consequences of the rule and applying rigorous, peer-reviewed methods to calculate the monetized costs and benefits, when possible.

According to the EPA's guidance, the foundation of benefit-cost analysis is determining whether a policy's overall net benefits to society are positive.⁴⁸ Net benefits are derived by summing all of the benefits that result from a policy change less the costs of that policy, including all ancillary consequences (positive and negative). Further, OMB's guidance notes that benefit-cost analysis can be used to indicate which policy option generates the largest net benefits to society, at least to the extent that all benefits and costs can be quantified and expressed in monetary units.⁴⁹ OMB also notes that this information can be useful for decision makers and the public, even when economic efficiency (e.g., maximizing net benefits) is not the overriding public policy objective, such as when a policy is explicitly designed to address distributional unfairness.⁵⁰

In addition to interpreting CAA section 112(n)(1)(A) as not requiring a benefit-cost analysis, the EPA does not consider a formal, monetized benefit-cost analysis to be the preferred approach for weighing advantages and disadvantages under that section for several important policy reasons. First, it is well-recognized that some categories of benefits can be difficult to monetize,⁵¹ and this incomplete quantitative characterization of the positive consequences can

⁴⁸ See pp. 1–4 of the EPA's *Guidelines for Preparation of Economic Analyses*.

⁴⁹ See p. 2 of OMB's *Circular A–4*.

⁵⁰ OMB's guidance also recognizes that there may be other social purposes for regulation beyond economic purposes such as removing distributional unfairness. See p. 5 of OMB's *Circular A–4*.

⁵¹ See Executive Order 13563; pp. 2 of OMB's *Circular A–4* ("It will not always be possible to express in monetary units all of the important benefits and costs. When it is not, the most efficient alternative will not necessarily be the one with the largest quantified and monetized net-benefit estimate."); and pp. 7–49 of the EPA's *Guidelines for Preparation of Economic Analyses* ("It often will not be possible to quantify all of the significant physical impacts for all policy options When there are potentially important effects that cannot be quantified, the analyst should include a qualitative discussion of benefits results. The discussion should explain why a quantitative analysis was not possible and the reasons for believing that these non-quantified effects may be important for decision making.").

⁴⁶ For example, see Docket ID No. EPA–HQ–OAR–2009–0234–20232.

⁴⁷ See pp. 477–660 of the EPA's *Responses to Public Comments on EPA's National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units*. Volume 2. Docket ID No. EPA–HQ–OAR–2009–0234–20126.

underestimate the monetary value of net benefits. As discussed in Sections V.C. and V.D. of this document, the numerous categories of benefits that the EPA was unable to quantify leads to an underestimate of the benefits in the MATS RIA. Second, national-level benefit-cost analyses may not account for important distributional effects, such as impacts to the most exposed and most sensitive individuals in a population. Thus, these equity considerations that are difficult to quantify are often considered outside of analyses that test (or determine) whether actions strictly improve economic efficiency (*i.e.*, increase net benefits).

Using peer-reviewed methods consistent with the agency's standard practices and the EPA's and OMB's guidance, the final MATS RIA found significant net benefits. As described in Section IV.B.2 of this document, the EPA estimated the changes in costs and emissions from MATS by using IPM to model the consequences of achieving the HAP emission limits on the power sector (specifically, for coal-fired EGUs). As described in the MATS RIA, the EPA evaluates the health benefits associated with these changes in emissions using a multi-step process. First, the EPA models the chemical transport of those emission reductions and the associated change in exposure. Next, the EPA estimates the number of specific health effects associated with the modeled exposure changes using relationships from health studies. Lastly, the EPA assigns a dollar value to those health effects based on the economic literature.

C. Consideration of HAP Benefits

The EPA estimated in the final RIA that MATS would reduce annual emissions from EGUs of mercury by 75 percent, hydrogen chloride (a surrogate for all acid gas HAP) by 88 percent, and PM_{2.5} (filterable PM is a surrogate for all non-mercury metal HAP) by 19 percent.⁵² Hazardous metals, acid gases, and organic pollutants can cause various adverse cancer and noncancer health effects including many chronic and acute health disorders, but the EPA was unable to quantify many of the health effects attributable to these emission reductions because data and methods available do not currently exist in the scientific literature.⁵³

⁵² See 77 FR 9424.

⁵³ The EPA explained in the MATS RIA that there are significant obstacles to successfully quantifying and monetizing the public health benefits from reducing HAP emissions. These obstacles include gaps in toxicological data, uncertainties in extrapolating results from high-dose animal experiments to estimate human effects at lower

Nevertheless, the EPA qualitatively accounted for these benefits from HAP emission reductions in Chapter 4 of the final MATS RIA, and the EPA maintains that the HAP-specific consequences of the rule are vital and further the goals of the statute.⁵⁴ In fact, the MATS RIA specifically accounted for these benefits in the comparison of monetized benefits to costs by adding a "+B" to denote the sum of all unquantified benefits (see Table ES-1 of the final MATS RIA).

In the MATS RIA, the EPA could only quantify and monetize a small subset of the health and environmental benefits attributable to reducing mercury emissions. Specifically, among neurodevelopmental effects, the EPA was only able to quantify and monetize IQ loss among a small subset of recreational fishers. The analyses the EPA conducted for this endpoint generated an estimate of \$4 to \$6 million annually, which reflects the dollar value of the reduction in IQ loss associated with changes in mercury exposure for typical recreational fishers who consume fish during pregnancy from the freshwater watersheds where the EPA had fish tissue data. While IQ loss is the only health effect that could be quantified and monetized, the EPA's independent Science Advisory Board noted that it is not the most potentially significant health effect associated with mercury exposure as other neurobehavioral effects, such as language, memory, attention, and other developmental indices, that are more responsive to mercury exposure.⁵⁵ This estimate of the monetized benefits of reducing mercury emissions did not account for (1) benefits from reducing adverse health effects on brain and nervous system development beyond IQ loss; (2) benefits for consumers of

doses, limited monitoring data, difficulties in tracking diseases such as cancer that have long latency periods, and insufficient economic research to support the valuation of the health impacts often associated with exposure to individual HAP.

⁵⁴ See p. 73–79 of the final MATS RIA for discussions of the health effects associated with reducing emissions of 13 non-mercury HAP emitted by EGUs.

⁵⁵ U.S. Environmental Protection Agency-Science Advisory Board. 2011. Peer Review of EPA's Draft National-Scale Mercury Risk Assessment. EPA-SAB-11-017. September. Docket ID No. EPA-HQ-OAR-2009-0234-19689. Available at: [http://yosemite.epa.gov/sab/sabproduct.nsf/BCA23C5B7917F5BF8525791A0072CCA1/\\$File/EPA-SAB-11-017-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/BCA23C5B7917F5BF8525791A0072CCA1/$File/EPA-SAB-11-017-unsigned.pdf). See p. 2 ("IQ loss is not a sensitive response endpoint for methylmercury and its use likely underestimates the impact of reducing methylmercury in water bodies") and p. 8 ("[I]n the Faroe Island study the most sensitive indicators were in the domains of language (Boston Naming Test), attention (continuous performance) and memory (California Verbal Learning Test) . . . In the Seychelles study, the Psychomotor Development Index was the most sensitive measure").

commercial (store-bought) fish (*i.e.*, the largest pathway to mercury exposure in the U.S.); (3) benefits for consumers of self-caught fish from oceans, estuaries or large lakes such as the Great Lakes; (4) benefits for the populations most affected by mercury emissions (*e.g.*, children of women who consume subsistence-level amounts of fish during pregnancy); (5) benefits to children exposed to mercury after birth; and (6) environmental benefits from reducing adverse effects on birds and mammals that consume fish. Thus, the limited estimate for the single neurodevelopmental endpoint that could be monetized (IQ loss among certain recreational fishers) is a substantial underestimate of the total mercury impacts among affected populations. These monetized estimates also do not reflect any benefits associated with reducing non-mercury HAP emissions.

D. Consideration of Total Benefits and Benefit-Cost Comparisons

Because the subset of mercury-only benefits that the EPA could quantify from MATS does not account for many of the important benefits associated with reducing HAP emissions from EGUs, it would be unreasonable to draw any conclusions from a comparison of the mercury-only benefits to the full costs of MATS. Instead, a complete benefit-cost comparison would account for all of the consequences of achieving the HAP emission limits (*i.e.*, direct and indirect as well as quantified and unquantified).⁵⁶ The MATS RIA contains a benefit-cost comparison that reflects only certain categories of benefits that could be confidently quantified and/or monetized. Reflecting just these impacts, the EPA estimated that the final MATS would yield annual monetized benefits (in 2007 dollars) of between \$37 billion to \$90 billion using a 3-percent discount rate and \$33 billion to \$81 billion using a 7-percent discount rate. Despite the fact that these estimates capture only a portion of the benefits of the rule, it is clear that the benefits of MATS outweigh the costs substantially. Specifically, the monetized benefits outweigh the estimated \$9.6 billion in annual costs by between 3-to-1 or 9-to-1 depending on the benefit estimate and discount rate used. As noted above, these total monetized benefits are underestimated due to the numerous categories of HAP and other benefits

⁵⁶ For example, as described in Section IV.B.2 of this document, the estimated costs of MATS reflect consequences beyond just the affected units.

that were not monetized in the MATS RIA.

As discussed above in Section IV.B, installing control technologies and implementing the compliance strategies necessary to reduce the HAP emissions directly regulated by the MATS rule also results in concomitant (co-benefit) reductions in the emissions of other pollutants such as directly emitted PM_{2.5} and SO₂ (a PM_{2.5} precursor). PM_{2.5} emissions are comprised in part by the mercury and non-mercury HAP metals that the MATS rule is designed to reduce. The only way to effectively control the particulate-bound mercury and non-mercury metal HAP is with PM control devices that indiscriminately collect all PM along with the metal HAP, which are predominately present as particles. Similarly, emissions of the acid gas HAP (hydrogen chloride, hydrogen fluoride, hydrogen cyanide, and selenium oxide) are reduced by acid gas controls that are also effective at reducing emissions of SO₂ (also an acid gas, but not a HAP). The benefits associated with reducing other pollutants (e.g., PM_{2.5} and SO₂) are substantial and comprise a primary portion of the monetized benefits of MATS, and the quantification of PM_{2.5}-related health effects is strongly supported by hundreds of peer-reviewed scientific studies.⁵⁷ While these reductions are not the objective of the MATS rule, the reductions are, in fact, a direct consequence of regulating the HAP emissions from EGUs. Consideration of known and quantifiable co-benefits such as these in a benefit-cost analysis is fully consistent with economic principles and is directed by guidance documents for conducting benefit-cost analyses of federal regulations from the EPA and OMB.⁵⁸

⁵⁷ 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 at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546>.

⁵⁸ Consideration of ancillary benefits in benefit-cost analysis is directed by OMB (*Circular A-4*, 2003, p. 26): “Your analysis should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks. An ancillary benefit is a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking.” It is also directed by the EPA’s *Guidelines for Preparation of Economic Analyses* (2010, p. 11–2): “An economic analysis of regulatory or policy options should present all identifiable costs and benefits that are incremental to the regulation or policy under consideration. These should include directly intended effects and associated costs, as well as ancillary (or co-) benefits and costs.”

Further, as discussed in the Legal Memorandum, CAA section 112(n)(1)(A) itself supports the inclusion of co-benefits because the statute directs the EPA to perform a study of the hazards to public health from HAP emissions from EGUs that are likely to remain after imposition of the other provisions of the CAA, including the ARP. In other words, Congress directed the EPA to consider the HAP co-benefits attributable to the regulation of SO₂ and nitrogen oxides in the ARP and other CAA programs. Thus, it is reasonable to conclude that the statute would also allow the EPA to consider other pollutant reductions directly resulting from regulation of HAP emissions if a benefit-cost analysis were required to support the appropriate finding. Because the co-benefits are a direct consequence of actions to reduce HAP emissions, are consistent with economic guidance documents, and are consistent with statutory requirements in CAA section 112(n)(1)(A), it would be unreasonable for the EPA to ignore co-benefits in the comparison of monetized benefits to monetized costs for MATS.

E. Conclusions Regarding the Benefit-Cost Analysis

Although data and methodological limitations did not allow the EPA to calculate all of the benefits that would result from reducing HAP emissions, the benefits (monetized and non-monetized) of MATS are substantial and far outweigh the costs, thus, the benefit-cost analysis presented in the RIA for MATS fully and independently supports the EPA’s determination that it is appropriate to regulate HAP emissions from EGUs. The EPA requests comments on this conclusion.

VI. Conclusion

As directed by the Supreme Court, the EPA has now taken cost into account in evaluating whether it is appropriate to regulate coal- and oil-fired EGUs under section 112 of the CAA. As explained in Section IV of this document, the EPA considered the reasonableness of the direct and indirect compliance costs of MATS based on several metrics and weighed the cost of regulation with other factors relevant to a decision to regulate HAP emissions from EGUs. The EPA found based on that evaluation that including a consideration of cost does not cause the agency to alter its determination that regulation of HAP emissions from EGUs is appropriate. The EPA also found that other cost considerations further support this conclusion.

In addition, though the EPA does not view formal benefit-cost analysis as

required to support the appropriate finding, the EPA conducted a formal benefit-cost analysis in the RIA for MATS and that analysis demonstrates that the monetized and non-monetized benefits of MATS are significant and far exceed the cost. The benefit-cost analysis thus supports the finding that it is appropriate to regulate HAP emissions from EGUs.

The EPA finds that the analysis set forth in Section IV of this document and the benefit-cost analysis in the RIA for MATS (and summarized in Section V) each provide independent support for a conclusion that regulation of HAP emissions from EGUs is appropriate. Based on these findings, the EPA proposes that the agency’s previous determination that it is appropriate to regulate HAP emissions from EGUs under section 112(d) of the CAA is not altered by a consideration of cost and that coal- and oil-fired EGUs are properly listed pursuant to section 112(c).

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to OMB for review because it “raises novel legal or policy issues arising out of legal mandates.” Any changes made in response to OMB recommendations have been documented in the docket. The EPA does not project any potential costs or benefits associated with this action.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. There are no information collection requirements in this proposed action.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The EPA does not project any potential costs or benefits associated with this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no

enforceable duty on any state, local or tribal governments or the private sector.

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.

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

This action does not have tribal implications as specified in Executive Order 13175. It would neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action is not anticipated to have notable impacts on emissions, costs, or energy supply decisions for the affected electric utility industry.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it is limited in scope and only considers cost of whether it is appropriate to regulate HAP emissions from electric utility steam generating units.

K. Determination Under CAA Section 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to provisions of section 307(d). Section 307(d) establishes procedural requirements specific to rulemaking under the CAA. Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

VIII. Statutory Authority

The statutory authority for this proposed action is provided by sections 112, 301, 302, and 307(d)(1) of the CAA as amended (42 U.S.C. 7412, 7601, 7602, 7607(d)(1)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

Dated: November 20, 2015.

Gina McCarthy,
Administrator.

[FR Doc. 2015–30360 Filed 11–30–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269; MB Docket No. 15–146, Report No. 3033]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration and clarification.

SUMMARY: Petitions for Reconsideration and Clarification (Petitions) have been filed in the Commission’s rulemaking proceeding by: Rick Kaplan, on behalf of the National Association of Broadcasters (two petitions) and D. Cary Mitchell, on behalf of the Blooston Rural Carriers.

DATES: Oppositions to the Petitions must be filed on or before December 16, 2015. Replies to an opposition must be filed on or before December 28, 2015.

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

FOR FURTHER INFORMATION CONTACT:

Mark Montano, Wireless Telecommunications Bureau, (202) 418–0691, email: mark.montano@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of Commission’s document, Report No. 3033, released November 24, 2015. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 or may be accessed online via the Commission’s Electronic Comment Filing System at <http://apps.fcc.gov/ecfs/>. The Commission will not send a copy of this *Public Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Public Notice* does not have an impact on any rules of particular applicability.

Subject: Broadcast Auction Scheduled to Begin March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward), published at 80 FR 61918, October 14, 2015, in AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269, MB Docket No. 15–146, Public Notice, and FCC 15–78. This *Public Notice* is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1).

Number of Petitions Filed: 3.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer. Office of the Secretary.

[FR Doc. 2015–30477 Filed 11–30–15; 8:45 am]

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Notices

Federal Register

Vol. 80, No. 230

Tuesday, December 1, 2015

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

Office of the Secretary

Meeting Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, Section 1408 of the *National Agricultural Research, Extension, and Teaching Policy Act of 1977* (7 U.S.C. 3123), and the *Agricultural Act of 2014*, the U.S. Department of Agriculture (USDA) announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: December 16–18, 2015. The public may file written comments before or up to January 4, 2016.

ADDRESSES: Beltsville Agricultural Research Center, 10300 Baltimore Avenue, Building 005, Room 020, Beltsville, Maryland 20705. Written comments may be sent to: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, U.S. Department of Agriculture, Room 332A, Jamie L. Whitten Building, Mail Stop 0321, 1400 Independence Avenue SW., Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: Michele Esch, Executive Director or Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202) 720–6199; or email: michele.esch@usda.gov or Shirley.Morgan@ars.usda.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice and recommendations on the top priorities and policies for food and agricultural research, education, extension, and economics. The main focus of this meeting will be on the food safety and nutrition programs of the USDA Research, Education, and Extension mission area. The Board will also receive updates and information pertinent to the research, education, and economics activities in USDA. A detailed agenda may be received from the contact person identified in this notice.

Tentative Agenda: On Wednesday, December 16, 2015, an orientation session for new members and interested incumbent members will be held from 10:00 a.m.–12:00 p.m. (noon) followed by the full Advisory Board convening at 12:00 p.m. (noon) and ending by 5:30 p.m.

On Thursday, December 17, 2015, the full Advisory Board will convene at 8:00 a.m. and adjourn at 5:00 p.m. An evening session will be held at 6:00 p.m. at the Greenbelt Marriott at 6400 Ivy Lane, Greenbelt, Maryland 20770.

On Friday, December 18, 2015, the Board will reconvene at 8:00 a.m. and adjourn at 12:00 p.m. (noon).

Public Participation: This meeting is open to the public and any interested individuals wishing to attend. Opportunity for public comment will be offered at the end of each day of the meeting. To attend the meeting and/or make oral statements regarding any items on the agenda, you must contact Michele Esch at 202–720–8408; email: Michele.esch@usda.gov at least 5 business days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business. Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (or by close of business Monday, January 4, 2016). All written statements must be sent to Michele Esch, Designated Federal Officer and Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, U.S. Department of Agriculture, Room 332A, Jamie L. Whitten Building, Mail Stop 0321, 1400 Independence

Avenue SW., Washington, DC 20250–0321; or email: michele.esch@usda.gov. All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Education, and Economics Advisory Board Office.

Done at Washington, DC, this 24th day of November 2015.

Catherine E. Woteki,

Under Secretary, Research, Education, and Economics, Chief Scientist, USDA.

[FR Doc. 2015–30444 Filed 11–30–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the Specialty Crop Committee's Stakeholder Listening Session

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of stakeholder listening session.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, and the Specialty Crop Competitiveness Act of 2004 (Public Law 108–465), the U. S. Department of Agriculture (USDA) announces a stakeholder listening session of the Specialty Crop Committee, a subcommittee of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: December 10, 2015 starting at 9:00 a.m. EST.

ADDRESSES: Great Lakes Fruit, Vegetable and Farm Market Expo and Michigan Greenhouse Growers EXPO, DeVos Place Conference Center, River Overlook Room A–B, DeVos Place Convention Center, 303 Monroe Ave. NW., Grand Rapids, Michigan, 49503.

The public may file written comments by December 21, 2015, to: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, U.S. Department of Agriculture, Room 332–A, Jamie L. Whitten Building, 1400 Independence Avenue SW., Washington, DC, 20250–2255 or nareeeab@ars.usda.gov.

FOR FURTHER INFORMATION CONTACT:

Michele Esch, Executive Director,
National Agricultural Research,
Extension, Education, and Economics
Advisory Board; telephone: (202) 720–
8408; fax: (202) 720–6199; or email:
Michele.esch@ars.usda.gov.

SUPPLEMENTARY INFORMATION:

The Specialty Crop Committee was established in accordance with the Specialty Crops Competitiveness Act of 2004 under Title III, Section 303 of Public Law 108–465. This Committee is a permanent subcommittee of the National Agricultural Research Extension, Education, and Economics Advisory Board (the Board). The Committee's charge is to study the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry. The congressional legislation defines "specialty crops" as fruits, vegetables, tree nuts, dried fruits and nursery crops (including floriculture).

In order to carry out its responsibilities effectively, the Committee is holding a stakeholder listening session. The listening session will elicit stakeholder input from industry and state representatives, national organizations and institutions, local producers, and other groups interested in the issues with which the Specialty Crop Committee is charged. This session will be an opportunity to share ideas on the specialty crop industry with members of USDA's Specialty Crop Committee, including: measures designed to improve the efficiency, productivity, and profitability of specialty crop production in the United States; measures designed to improve competitiveness through research, extension, and economics programs affecting the specialty crop industry; and programs that would: enhance quality and shelf-life, development of new crop protection tools, preventing foreign invasive pests and diseases, developing new and improved marketing tools, and enhancing food safety, improvement of mechanization of production practices, and enhancing irrigation techniques. Input received will help formulate recommendations from the Specialty Crop Committee to USDA.

Written comments by attendees and other interested stakeholders will be welcomed as additional public input by December 21, 2015. All verbal and written statements will become part of the official public record of the REE Advisory Board Office.

Done at Washington, DC, this 24th day of November 2015.

Catherine E. Woteki,

Under Secretary, Research, Education, and Economics, Chief Scientist, USDA.

[FR Doc. 2015–30450 Filed 11–30–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service**

**Agency Information Collection
Activities: Proposed Collection;
Comment Request—Follow Up to an
Assessment of the Roles and
Effectiveness of Community-Based
Organizations in the Supplemental
Nutrition Assistance Program**

AGENCY: Food and Nutrition Service,
USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of an existing collection for the Food and Nutrition Service to describe the roles of community-based organizations (CBOs) in the Supplemental Nutrition Assistance Program (SNAP), and to assess if, and how, the use of CBOs to conduct SNAP applicant interviews has impacted SNAP program outcomes such as timeliness, payment error rates, access, and client satisfaction across five (5) States.

DATES: Written comments on this notice must be received on or before February 1, 2016.

ADDRESSES: 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 will have practical utility; (b) the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, and (d) ways to enhance the quality, utility and clarity of the information to be collected.

Comments may be sent to: Rosemarie Downer, Food and Nutrition Service/ U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014,

Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Rosemarie Downer at 703–305–2576 or via email to rosemarie.downer@fns.usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this information collection should be directed to Rosemarie Downer at 703–305–2129. Information requests submitted through email should refer to the title of this proposal.

SUPPLEMENTARY INFORMATION:

Title: Follow Up to an Assessment of the Roles and Effectiveness of Community-Based Organizations in the Supplemental Nutrition Assistance Program.

OMB Number: 0584–0578.

Form Number: Not Applicable.

Expiration Date: May 31, 2016.

Type of Request: Revision of a currently approval information collection.

Abstract: To provide more timely and efficient services to the growing number of applicants to SNAP, State and local SNAP offices are partnering with CBOs that have the capacity to provide application assistance and conduct applicant interviews for SNAP across five (5) States. FNS has approved these partnerships as part of a demonstration of "Community Partner Interviewer Projects." In 2015, FNS released a report that assessed whether the use of CBOs to conduct SNAP applicant interviews had an impact on SNAP program performance. Specific program outcomes included efficiency, payment accuracy and client satisfaction. FNS has extended the demonstration projects, and to further assess the impact of these SNAP–CBO partnerships on SNAP program outcomes, FNS is seeking to collect additional data from the five States that are participating in the demonstration.

The information collection plan for this follow-up includes a satisfaction survey to be completed by SNAP

participants who were interviewed by CBO staff at the time of application or recertification for SNAP, and program administration data (error rates, timeliness, payment accuracy, and eligibility determination) from the five participating States. FNS' data collection strategy aims to maximize both efficiency and data quality. The participant satisfaction survey will take no more than five minutes. FNS will use the information collected to evaluate whether the 10 Community Partner Interviewer projects have helped to improve SNAP access and performance.

Affected Public: 3,452 Individuals and Households (3,384 Respondent & 68 Non-Respondent type SNAP participants).

Estimated Number of Respondents: 3,384.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Response: 3,384.

Estimated Time per Respondent: 0.08 hours (4.8 minutes).

Estimated Total Annual Burden on Respondents: 272.08 burden hours.

Affected Public: State Agencies.

Estimated Number of Respondents: 5 States.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Responses: 10.

Estimated Time per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 burden hours.

Affected Public: Business-for-not-for-Profit (Respondent type: Community-Based Organizations (CBOs)).

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 338.40.

Estimated Total Annual Responses: 3,384.

Estimated Time per Respondent: 0.08.

Estimated Total Annual Burden on Respondents: 270.40.

FNS is requesting 552.48 burden hours.

There is no recordkeeping requirements involved in this data collection.

Dated: November 24, 2015.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015-30442 Filed 11-30-15; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache National Forest and Ashley National Forest; Utah; High Uintas Wilderness Domestic Sheep Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In 2007, the Wasatch-Cache National Forest, now the Uinta-Wasatch-Cache National Forest (UWCNF), along with other forests in the Nation issued a number of decisions reissuing term grazing permits on range allotments using a provisional categorical exclusion (CE) authorized by Congress. In 2010, the United States Forest Service was sued for authorizing grazing on allotments using this CE authority. In December 2013, the Intermountain Region and the United States District Court for the District Court of Idaho agreed to the Range CE settlement agreement. This agreement stipulated that the UWCNF would issue a scoping notice by May 2014 on five domestic sheep allotments.

These were Gilbert Peak, Hessie Lake-Henry's Fork, Red Castle, East Fork Blacks Fork, and the Middle Fork Blacks Fork allotments. In reviewing the management of these domestic sheep allotments it became apparent that the effects of grazing had to be considered for both the north and south slope of the Uinta Mountains because sheep trailed from the north slope of the Uinta Mountains to the south slope for the summer grazing season. Therefore, the analysis was then extended to include the Painter Basin, Tungsten, Oweep, Ottoson Basin, and Fall Creek sheep allotments on the Ashley National Forest, which are some of the domestic sheep allotments on the south slope of the Uinta Mountains.

Since 2007, various species of terrestrial and aquatic animals as well as plants have been added to or removed from the Regional Forester's Sensitive Species (RFSS) list. The RFSS will be analyzed as part of the EIS.

In May of 2014, scoping was initiated for this project; at that time, it was anticipated that the project would be completed as an Environmental Assessment. Since then, it has become apparent that there is a potential for significant impacts and that an Environmental Impact Statement is needed. This project will evaluate the effects of continued domestic sheep grazing on these 10 allotments. These 10 sheep allotments located on the north

and south slopes of the Uinta Mountains and are located in the Ashley or Uinta-Wasatch-Cache NFs.

DATES: Comments concerning the scope of the analysis must be received by December 31, 2015. The draft environmental impact statement is expected around November, 2016 and the final environmental impact statement is expected around October, 2017.

ADDRESSES: Send written comments to David Whittekiend, Uinta-Wasatch-Cache National Forest Supervisor at 857 West South Jordan Parkway, South Jordan, UT 84095. Comments may also be sent via email to comments-intermtn-ashley@fs.fed.us or comments-intermtn-uwc@fs.fed.us, or via facsimile to 801-253-8118.

FOR FURTHER INFORMATION CONTACT: Paul Cowley, Interdisciplinary Team Leader, at the Uinta-Wasatch Cache Supervisor's Office (telephone: 801-999-2177; email: pcowley@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 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

In response to the requirements of the 2013 settlement, the UWC is required to reassess the effects of domestic sheep grazing on the Gilbert Peak, Hessie Lake-Henry's Fork, Red Castle, East Fork Blacks Fork, and the Middle Fork Blacks Fork allotments. As such there is a need to respond to the requirements of the 2013 settlement. Since the Ashley NF neighbors those allotments to the south (Painter Basin, Tungsten, Oweep, Ottoson Basin, and Fall Creek), and domestic sheep utilize both the north and south slopes of the High Uintas, it was determined that an analysis of all 10 allotments was needed.

With the addition of new species to the RFSS,¹ the Forest Service must design and manage projects when they are initiated and implemented to account for impacts to those species.²

¹ RFSS are "those plant and animal species identified by a regional forester for which population viability is a concern . . ." (FSM 2670.5).

² Forest Service Manual 2670.32 required that the Forests "Avoid or minimize impacts to species whose viability has been identified as a concern." The Forests are also required to "Analyze, if impacts cannot be avoided, the significance of potential adverse effects on the population or its habitat within the area of concern and on the species as a whole. (The line officer, with project approval authority, makes the decision to allow or

Continued

As such there is a need to evaluate and better understand the impacts of sheep grazing on recently designated RFSS. There is also a need to better understand the effects of domestic sheep grazing on the surrounding physical environment and the social environment. The overall purpose of this project is to evaluate the effects of domestic sheep grazing in these allotments and determine the impacts on the physical and social aspects of the project area.

Proposed Action

The Forest Service will evaluate the 10 sheep allotments on the UWC and Ashley NFs: Those allotments are Gilbert Peak, Hesse Lake-Henry's Fork, Red Castle, East Fork Blacks Fork, and the Middle Fork Blacks Fork on the UWCNF, and Painter Basin, Tungsten, Oweep, Ottoson Basin, and Fall Creek on the Ashley NF.

Based on current information both Forests are proposing to authorize grazing on five allotments on the UWCNF and five allotments on the Ashley NF. Livestock grazing would be authorized using Forest Plan direction to meet or move toward the desired conditions identified in the Forest Plans. The Forests are also proposing to continue to use the sheep driveway that allows for sheep that graze the listed allotments.

The project will evaluate multiple resources for impacts to include range, wilderness, recreation, hydrology, wildlife, fisheries and aquatic organisms, plants, soils, as well as potential impacts to economics and society.

The project analysis area is located in Uinta County, Wyoming and Duchesne and Summit Counties, Utah on the Evanston-Mountain View and Duchesne/Roosevelt Ranger Districts. The project area is located approximately 40 miles north-northwest of Duchesne, Utah, and about 40 miles southeast of Evanston, Wyoming. The project area encompasses about 160,000 acres and is located in the Uinta Mountains on both the north and south facing slopes of the central ridgeline.

The Forest Service will begin the environmental analysis in 2015, and the project is anticipated to end in late 2017.

Possible Alternatives

At this time, there are two alternatives that are being considered. The first is the proposed action described above. The second is the "No-Action"

alternative which would not authorize grazing on the allotments. During the course of the project analysis, it is possible additional alternatives will be analyzed that may result from public participation or from staff participation, or from both.

Responsible Official

There are two Responsible Officials for this project: The Uinta Wasatch Cache Forest Supervisor and the Ashley Forest Supervisor.

Nature of Decision To Be Made

The decision to be made includes whether or not sheep grazing will continue on these allotments, and whether or not a site specific Forest Plan amendment could be needed.

Preliminary Issues

Preliminary issues that have been identified include impacts to Rocky Mountain bighorn sheep, wilderness, socioeconomic, recreation, soils, hydrology, and vegetation. Additional issues may arise from the public during the comment process.

Scoping Process

Scoping for this project was initiated in May of 2014. At that time a scoping package was sent to interested parties, tribes, and organizations. The proposed action has not changed from that original scoping letter, with the exception that the Forests have decided to prepare an environmental impact statement instead of an environmental assessment.

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Following this Notice of Intent, it is anticipated that a second scoping letter describing the nature of the project will be sent to interested parties and organizations in the fall of 2015. There will also be opportunities to comment when the draft EIS is released. Additionally, public meetings are being considered as well, and would occur after a scoping letter was sent out.

The Forest Service is looking for comments identifying issues or concerns with regards to sheep grazing on these allotments. Comments that clearly and concisely articulate a perceived problem, and how to find a solution to that problem are most helpful.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly

articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

November 20, 2015.

David C. Whittekiend,

Forest Supervisor, Uinta-Wasatch-Cache National Forest,

Dated: November 20, 2015.

John R. Erickson,

Forest Supervisor, Ashley National Forest.

[FR Doc. 2015-30371 Filed 11-30-15; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Brush Creek/Hayden Ranger District; Wyoming; North Savery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In the North Savery Project, the Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Brush Creek/Hayden Ranger District proposes approximately 6,500 acres of salvage logging, precommercial thinning, and hazard tree clearing on National Forest System lands in the northwest Sierra Madre mountain range. The District also proposes changes to the road system in the project area, including decommissioning 26 miles of roads that are causing direct impacts to watershed resources. The Governor of Wyoming has identified the project area as a priority landscape for treatment under the 2014 Farm Bill and amended Healthy Forests Restoration Act of 2003, which provide for expedited environmental analysis and treatments to address areas affected by insect and disease infestations. Accordingly, the environmental analysis associated with the North Savery Project will proceed according to Section 104 of the Healthy Forests Restoration Act and will be subject to subparts A and C of the U.S. Forest Service Project-Level Predecisional Administrative Review Process documented at 36 CFR 218.

DATES: Comments concerning the scope of the analysis must be received by February 1, 2016. The draft environmental impact statement is expected in May 2016 and the final

disallow impact, but the decision must not result in loss of species viability or create significant trends toward federal listing.)"

environmental impact statement is expected in September 2016.

ADDRESSES: Send written comments to Medicine Bow National Forest; Attn: Melanie Fullman; PO Box 249, Saratoga, WY 82331. Comments may also be sent via email to comments-rm-medicine-bow-routt-brush-creek-hayden@fs.fed.us, or via facsimile to 307-326-5250. Comments may be hand delivered during business hours (8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m.) to 2171 Highway 130, Saratoga WY 82331.

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 2171 Highway 130, Saratoga WY. Visitors are encouraged to call ahead to 307-326-2500 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Monique Nelson, Medicine Bow National Forest; 2468 Jackson St, Laramie WY 82070; phone (307)745-2310; or email: moniquenelson@fs.fed.us. A scoping document, including maps, is available online at http://www.fs.fed.us/nepa/nepa_project_exp.php?project=47913.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the North Savery Analysis is to (1) promote forest regeneration in stands affected by mountain pine beetle; (2) treat overstocked timber stands to improve growth and vigor; (3) reduce the development of large continuous high hazard fuel conditions in high timber production areas; (4) remove hazard trees from high priority areas affecting public safety; (5) provide merchantable timber products for sale from designated timber units; and (6) relocate, reconstruct, or restore to natural conditions portions of the existing road system that are in need of maintenance or are detrimentally contributing to watershed health.

Over the past decade, a mountain pine beetle epidemic has killed pine trees across thousands of acres of forest land in southern Wyoming. In lodgepole pine forests, approximately 70% of the trees greater than 6" in diameter are dead or dying from mountain pine beetle infestation. Timber stands in the North Savery Project analysis area are among the most productive growing

sites on the Medicine Bow National Forest, and it is a priority to reforest and return these stands to timber production. There is a limited time in which to salvage these trees and recover a sawtimber product. The Governor of Wyoming has identified this project location as a priority area for treatment due to insect and disease infestation.

Proposed Action

Salvage Harvest

The Forest Service has identified and will analyze approximately 7,700 acres for salvage harvest. Approximately 2,200 of the analyzed acres will not be harvested in order to conserve watershed health and wildlife habitat. Acres to be set aside from treatment will be determined based on the analyzed effects to water yields in each watershed and the presence of wildlife and other resources of interest. Overstory Removal and Clearcut treatments would be used in lodgepole pine stands to salvage dead and dying trees; some live trees will also be harvested.

Overstory removal treatments are used in areas that have a significant understory component. The intent is to harvest overstory trees while maintaining understory trees that are too small to be merchantable. Clearcut prescriptions are used in stands that have beetle mortality greater than 70%, are highly mistletoe infested, have low levels of existing regeneration, or where the remaining green trees would be at high risk of windthrow. Species present and the presence, distribution, and health of the understory will dictate what options are available for salvage treatments on a stand-by-stand basis. Generally, lodgepole pine trees over 7.0 inches in diameter would be designated for removal. Trees of all species less than 7.0 inches in diameter would generally remain on site. Areas within units that have large, contiguous components of Engelmann spruce may be retained for wildlife. Subalpine fir, when found as a minor component in lodgepole pine stands, would not be retained unless included as wildlife habitat.

Precommercial Thinning

Precommercial thinning is proposed on approximately 1,000 acres of densely regenerating lodgepole pine seedling/sapling stands. Precommercial thinning would improve growth and vigor, reduce stress from overcrowding and competition, and provide for a future stand that is less susceptible to bark beetles.

Hazard Tree Clearing

Some areas identified for salvage harvest include hazard trees along roads, trails, and administrative sites.

Roads Proposals

The Forest Service proposes to decommission (return to a natural state) approximately 26 miles of roads that are causing direct impacts to wetland and water resources, provide redundant access in areas of high road density, or are in greater sage-grouse core habitat. To ensure adequate access to the area, the Forest Service proposes to add approximately 6 miles of well-placed unauthorized routes to the National Forest road system, convert 1 mile of road to ORV trail, and build approximately 1 mile of ORV trail. Finally, the Forest Service proposes to construct 1 mile of road, reconstruct 2 miles of road, and reroute 1 mile of road. Approximately 20 miles of temporary roads may be needed to facilitate timber harvest.

Responsible Official

Melanie B. Fullman, District Ranger; Medicine Bow Routt-National Forests and Thunder Basin National Grassland, Brush Creek/Hayden Ranger District.

Nature of Decision To Be Made

The Responsible Official will decide whether to adopt and implement the proposed action, implement an alternative to or modification of the proposed action, or take no action with respect to the North Savery Project.

Preliminary Issues

The following issues were identified while scoping a larger "Savery" project in 2011. The Savery Project was scoped but was not analyzed or implemented. This North Savery Project is located with the former Savery Project analysis area but is smaller in extent and includes fewer proposals. Preliminary issues are: (1) effects of proposed timber salvage treatments on wildlife, wildlife habitat, and watershed function; (2) effects of road closures and road decommissioning on recreational access to the national forest.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. There will a public meeting held at the Bureau of Land Management Rawlins Field Office located at 1300 North 3rd St., Rawlins WY 82301 on December 9, 2015 from 5:30 p.m. to 7:30 p.m. A second public meeting will be held at the Platte Valley Community Center located at 210 W

Elm Ave, Saratoga, WY 82331 on December 10, 2015 from 5:30 to 7:30 p.m.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Melanie B. Fullman,

District Ranger.

[FR Doc. 2015-30422 Filed 11-30-15; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Cold Storage Survey. Revision to burden hours will be needed due to changes in the size of the target population, expected increases in response rates, and modes of data collection. The questionnaires have had some minor modifications to accommodate changes in the products stored by the industry, and to make the questionnaires easier to complete. The target population for cold storage operators (both mandatory and voluntary samples) will be contacted for this data on a monthly basis. Fruit storage operations are contacted on a monthly—seasonal basis. The capacity survey is conducted once every other year of all operations with refrigerated storage capacity. Most of these surveys are voluntary; the one exception is for operations that store certain manufactured dairy products that are required by Public Law 106–532 and 107–171 to respond.

DATES: Comments on this notice must be received by February 1, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0001, by any of the following methods:

- Email: ombofficer@nass.usda.gov. Include docket number above in the subject line of the message.
- E-fax: (855) 838–6382.
- Mail: Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- Hand Delivery/Courier: Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at ombofficer@nass.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Cold Storage Survey.
OMB Control Number: 0535–0001.
Expiration Date of Approval: May 31, 2016.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare, and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The monthly Cold Storage Survey provides information on national supplies of food commodities in refrigerated storage facilities. A biennial survey of refrigerated warehouse capacity is also conducted to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply. Information on stocks of food commodities that are in refrigerated facilities have a major impact on the price, marketing, processing, and distribution of agricultural products.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food

Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995, (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, “Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),” **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Most of these surveys are voluntary; the one exception is for operations that store certain manufactured dairy products that are required by Public Law 106–532 and 107–171 to respond.

Estimate of Burden: Public reporting burden for this information collection is based on 3 individual surveys with expected responses of 10–30 minutes. The Refrigerated Capacity Survey is conducted once every 2 years, the other surveys are conducted monthly.

Respondents: Refrigerated storage facilities.

Estimated Number of Respondents: 1,600.

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 85%, we estimate the burden to be 4,200 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 20, 2015.

R. Renee Picanso,
Associate Administrator.

[FR Doc. 2015-30445 Filed 11-30-15; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Request Revision and Extension of a Currently Approved Information Collection.

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Agricultural Prices Surveys. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by February 1, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535-0003, by any of the following methods:

- Email: ombofficer@nass.usda.gov.

Include docket number above in the subject line of the message.

- E-fax: (855) 838-6382.

• Mail: Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250-2024.

• Hand Delivery/Courier: Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250-2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS-OMB Clearance Officer, at (202) 690-2388 or at ombofficer@nass.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Prices.

OMB Control Number: 0535-0003.

Expiration Date of Approval: May 31, 2016.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

The Agricultural Prices surveys provide data on the prices received by farmers and prices paid by them for production goods and services. NASS estimates based on these surveys are used as a Principle Economic Indicator of the United States. These price estimates are also used to compute Parity Prices in accordance with requirements of the Agricultural Adjustment Act of 1938 as amended (Title III, Subtitle A, Section 301(a)). In addition, price data are used by the Federal Crop Insurance Corporation to help determine payment rates, program option levels, and disaster programs.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-113) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this information collection is based on more than 30 individual surveys with expected responses of 5-20 minutes and frequency of 1-12 times per year. Estimated number of responses per respondent is approximately 2.6 times per year.

Respondents: Farmers and farm-related businesses.

Estimated Number of Respondents: 75,000.

Estimated Total Annual Burden on Respondents: 33,000 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690-2388.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and will be summarized in the request for OMB approval.

Signed at Washington, DC, November 20, 2015.

R. Renee Picanso,
Associate Administrator.

[FR Doc. 2015-30448 Filed 11-30-15; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Extension, Without Change, of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request extension without change of a currently approved information collection, the Generic Clearance for Survey Research Studies. There are no revisions to burden hours or the number of responses under this information collection request.

DATES: Comments on this notice must be received by February 1, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535-0248, by any of the following methods:

- Email: ombofficer@nass.usda.gov.

Include docket number above in the subject line of the message.

- E-fax: (855) 838-6382.

• Mail: Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336

South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

- **Hand Delivery/Courier:** Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at ombofficer@nass.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Survey Research Studies.

OMB Control Number: 0535–0248.

Type of Request: To extend a currently approved information collection for a period of three years.

Abstract: The National Agricultural Statistics Service (NASS) of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for a generic clearance that will allow NASS to rigorously develop, test, and evaluate its survey instruments and methodologies. The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture. This request is part of an on-going initiative to improve NASS surveys, as recommended by both its own guidelines and those of OMB.

In the last decade, state-of-the-art techniques have been increasingly instituted by NASS and other Federal agencies and are now routinely used to improve the quality and timeliness of survey data and analyses, while simultaneously reducing respondents' cognitive workload and burden. The purpose of this generic clearance is to allow NASS to continue to adopt and use these state-of-the-art techniques to improve its current data collections efforts. These tests will also be used to aid in the development of new surveys.

NASS envisions using a variety of survey improvement techniques, as appropriate to the individual project under investigation. These include focus groups, cognitive and usability laboratory and field techniques, exploratory interviews, behavior coding, respondent debriefing, pilot surveys,

and split-panel tests. After obtaining participants' permission, NASS plans to audio-record some cognitive interviews and usability interviews, in order to allow for more complete and accurate summaries of these qualitative interviews. This is a standard procedure for cognitive interviews and usability interviews at many other survey organizations, including Federal agencies. The consent form would be used for audio recording some cognitive interviews and usability interviews for research purposes. For these types of interviews, there will be no collection of Personally Identifiable Information (PII) or any identifying information about the operator or operation.

Following standard OMB requirements NASS will submit a change request to OMB individually for each survey improvement project it undertakes under this generic clearance and provide OMB with a copy of the questionnaire (if one is used), and all other materials describing the project.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320. Participation in all surveys and studies conducted under this approval will be voluntary.

NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for these collections of information is estimated to average from 15 minutes to 1.5 hours per respondent, dependent upon the survey and the technique used to test for that particular survey. The overall average is estimated to be 0.6 hours per response.

Respondents: Farmers, ranchers, farm managers, farm contractors, agribusinesses, and households.

Estimated Number of Respondents: 25,000.

Frequency of Responses: On occasion.

Estimated Total Annual Burden: 15,000 hours.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 20, 2015.

R. Renee Picanso,
Associate Administrator.

[FR Doc. 2015–30451 Filed 11–30–15; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1990]

Approval of Subzone Status, Outokumpu Stainless USA, LLC, Calvert, Alabama

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the City of Mobile, grantee of Foreign-Trade Zone 82, has made application to the Board for the establishment of a subzone at the facility of Outokumpu Stainless USA, LLC, located in Calvert, Alabama (FTZ Docket B–62–2015, docketed September 10, 2015);

Whereas, notice inviting public comment has been given in the **Federal Register** (80 FR 56962, September 21,

2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facility of Outokumpu Stainless USA, LLC, located in Calvert, Alabama (Subzone 82I), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 20th day of November, 2015.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015-30509 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1988]

Expansion of Subzone 84P, Houston Refining LP, Houston, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, has made application to the Board to expand Subzone 84P on behalf of Houston Refining LP to include an additional 5.05 acres at Site 1 located in Houston, Texas (FTZ Docket B-49-2015, docketed August 3, 2015);

Whereas, notice inviting public comment has been given in the **Federal Register** (80 FR 46954, August 6, 2015) and the application has been processed

pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 84P on behalf of Houston Refining LP as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 20th day of November, 2015.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2015-30512 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1987]

Approval of Subzone Status, Sasol Chemicals (USA), LLC, Calcasieu Parish, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Lake Charles Harbor & Terminal District, grantee of Foreign-Trade Zone 87, has made application to the Board for the establishment of a subzone at the facilities of Sasol Chemicals (USA), LLC, located in Calcasieu Parish, Louisiana (FTZ Docket B-48-2015, docketed July 28, 2015);

Whereas, notice inviting public comment has been given in the **Federal Register** (80 FR 45944, August 3, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the

examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facilities of Sasol Chemicals (USA), LLC, located in Calcasieu Parish, Louisiana (Subzone 87E), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 20th day of November, 2015.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015-30511 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1991]

Reorganization of Foreign-Trade Zone 258 Under Alternative Site Framework, Bowie County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the TexAmericas Center, grantee of Foreign-Trade Zone 258, submitted an application to the Board (FTZ Docket B-42-2015, docketed June 22, 2015) for authority to reorganize under the ASF with a service area that includes a portion of Bowie County, Texas, adjacent to the Shreveport-Bossier City Customs and Border Protection port of entry, and FTZ 258's existing Sites 1 and 2 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 36967-36968, June 29, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 258 under the ASF is approved, subject to

the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 2 if not activated within five years from the month of approval.

Signed at Washington, DC, this 20th day of November, 2015.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015-30508 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1989]

Reorganization of Foreign-Trade Zone 33 under Alternative Site Framework; Pittsburgh, Pennsylvania

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of Foreign-Trade Zone 33, submitted an application to the Board (FTZ Docket B-43-2015, docketed June 23, 2015) for authority to reorganize under the ASF with a service area of Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Somerset, Washington and Westmoreland Counties, Pennsylvania, in and adjacent to the Pittsburgh Customs and Border Protection port of entry, FTZ 33's existing Sites 1, 2 and 18 would be categorized as magnet sites, existing Sites 3, 4, 5 and 10 would be categorized as usage-driven sites and Sites 1, 3 and 10 would be modified to reduce the sites' boundaries;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 37221, June 30, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the

requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 33 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to an ASF sunset provision for magnet sites that would terminate authority for Sites 2 and 18 if not activated within five years from the month of approval, and to an ASF sunset provision for usage-driven sites that would terminate authority for Sites 3, 4, 5 and 10 if no foreign-status merchandise is admitted for a *bona fide* customs purpose within three years from the month of approval.

Signed at Washington, DC, this 20th day of November, 2015.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015-30507 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-520-803]

Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the United Arab Emirates (UAE). The period of review (POR) is November 1, 2013, through October 31, 2014. The review covers one producer/exporter of the subject merchandise, JBF RAK LLC (JBF). The Department preliminarily determines that sales of subject merchandise have been made below normal value by JBF. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4261.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are all gauges of raw, pre-treated, or primed polyethylene terephthalate film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. Polyethylene terephthalate film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice.¹ The Preliminary Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit in room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and electronic versions of

¹ See the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates" (Preliminary Decision Memorandum), dated concurrently with this notice.

the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margins exist for the period November 1, 2013, through October 31, 2014:

Manufacturer/ exporter	Weighted- average margin (percent)
JBF RAK LLC	1.71

Disclosure and Public Comment

The Department intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may not be filed later than five days after the time limit for filing case briefs.² Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.³ Executive summaries should be limited to five pages total, including footnotes.⁴

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results

in the **Federal Register**, unless otherwise extended.⁵

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).⁶ We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET Film from the UAE entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the

exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.05 percent, the all-others rate established in the investigation.⁷ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 23, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

APPENDIX

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Date of Sale
5. Discussion of Methodology
6. Product Comparisons
7. Export Price
8. Normal Value
9. Cost of Production Analysis
10. Currency Conversion

[FR Doc. 2015-30504 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-DS-P

⁵ See section 751(a)(3)(A) of the Act.

⁶ In these preliminary results, the Department applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

² See 19 CFR 351.309(d)(1).

³ See 19 CFR 351.309(c)(2), (d)(2).

⁴ *Id.*

⁷ See *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595, 66597 (November 10, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-823]

Welded Line Pipe From the Republic of Turkey: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing a countervailing duty order on welded line pipe from the Republic of Turkey (Turkey).

DATES: *Effective Date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3874.

SUPPLEMENTARY INFORMATION:**Background**

On October 13, 2015, the Department published its final determination in the countervailing duty investigation of welded line pipe from Turkey.¹ On November 20, 2015, the ITC notified the Department of its final determination pursuant to section 705(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from Turkey.²

Scope of the Order

The merchandise covered by this order is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or

can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this order.

The welded line pipe that is subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Countervailing Duty Order

In accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC has notified the Department of its final determination that the industry in the United States producing welded line pipe is materially injured by reason of subsidized imports of welded line pipe from Turkey. Therefore, in accordance with section 705(c)(2) of the Act, we are publishing this countervailing duty order.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of welded line pipe entered, or withdrawn from warehouse, for consumption on or after March 20, 2015, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**,³ and before July 18, 2015, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of welded line pipe made on or after July 18, 2015, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due

to the Department's discontinuation, effective July 18, 2015, of the suspension of liquidation.

Suspension of Liquidation

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation of welded line pipe from Turkey, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Producer/ Exporter	Net subsidy rate (percent)
Borusan Istikbal Ticaret, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S.	152.20
Tosçelik Profil ve Sac Endustrisi A.S., Tosyali Demir Celik Sanayi A.S., Tosyali Dis Ticaret A.S., Tosyali Elektrik Enerjisi Toptan Satış İth. İhr. A.S., and Tosyali Holding A.S. ...	1.31
All Others	1.31

This notice constitutes the countervailing duty order with respect to welded line pipe from Turkey, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B8024 of the main Commerce Building, for a copy of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: November 23, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015-30503 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-DS-P

¹ See *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015).

² See Letter to Christian Marsh, Deputy Assistant Secretary of Commerce for Enforcement and Compliance, from Meredith Broadbent, Chairman of the U.S. International Trade Commission, regarding welded line pipe from the Turkey (November 20, 2015). See also *Certain Welded Line Pipe from Korea and Turkey*, Investigation Nos. 701-TA-525 and 731-TA-1260-1261 (Final), USITC Publication 4580 (November 2015).

³ See *Welded Line Pipe From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 80 FR 14943 (March 20, 2015).

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-427-602]

Brass Sheet and Strip From France: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip from France,¹ pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). This review covers two companies, Griset SA (Griset) and KME France SAS (KME France). The period of review (POR) is March 1, 2014, through February 28, 2015. We preliminarily find that subject merchandise has been sold at less than normal value by both Griset and KME France. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:**Scope of the Order**

The product covered by the orders is brass sheet and strip, other than leaded and tinned brass sheet and strip, from France. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7409.21.00 and 7409.29.00.

A full description of the scope of the order is contained in the Preliminary Decision Memorandum.² The written description is dispositive.

Methodology

Because both Griset and KME France failed to respond to the Department's

questionnaire, we preliminarily determined to rely on facts available with an adverse inference with respect to Griset and KME France, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. Thus, we preliminarily assigned a rate of 42.24 percent as the weighted-average dumping margin for both Griset and KME France.³ For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/index.html>. A list of topics included in the Preliminary Decision Memorandum is included in Appendix I attached to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins on brass sheet and strip from France exist for the period March 1, 2014, through February 28, 2015, at the following rates:

Producer or exporter	Estimated weighted-average dumping margin (Percent)
Griset SA	42.24
KME France SAS	42.24

Disclosure and Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs

not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.⁴ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁵ Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice.⁶ Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

When submitting a document to the Department *via* the Department's electronic records system, ACCESS, the document must be received successfully in its entirety by 5 p.m. Eastern Time on the date on which it is due.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. For the final results, if we continue to rely on adverse facts available to establish the weighted-average dumping margins for Griset and KME France, we will instruct U.S. Customs and Border Protection (CBP) to apply an *ad valorem* assessment rate of 42.24 percent to all entries of subject merchandise during the POR which were produced and/or exported by Griset or KME France.

The Department clarified its "automatic assessment" regulation on May 6, 2003.⁷ This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its

¹ See *Antidumping Duty Order; Brass Sheet and Strip From France*, 52 FR 6995 (March 6, 1987) (the Order).

² See memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for Preliminary Results of the 2014–2015 Antidumping Duty Administrative Review: Brass Sheet and Strip from France" (Preliminary Decision Memorandum), dated concurrently with this notice.

³ Because this was an AFA rate derived from the petition in the investigation, the rate was not subject to the Department's so-called "zeroing" methodology. See *Brass Sheet and Strip From France, Italy, and Japan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders*, 76 FR 39849 (July 7, 2011) and accompanying Issues and Decision memorandum at 1–3 ("History of the Orders" section); see also the Order; see also *Brass Sheet and Strip from France: Final Determination of Sales at Less than Fair Value*, 52 FR 812 (January 9, 1987).

⁴ See 19 CFR 351.309(d).

⁵ See 19 CFR 351.303 (for general filing requirements).

⁶ See 19 CFR 351.310(c).

⁷ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction.⁸

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of brass sheet and strip from France entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Griset and KME France will be equal to the weighted-average dumping margin established in the final results of this administrative review except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 42.24 percent *ad valorem*, the all-others rate established in the less-than-fair-value investigation.⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notifications to Importers

This notice serves as a preliminary 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 doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 17, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- A. Summary
- B. Background
- C. Scope of the Order
- D. Discussion of the Methodology
 - 1. *Application of Facts Available and Use of Adverse Inference*
 - a. Use of Facts Available
 - b. Application of Facts Available With an Adverse Inference
 - c. Selection and Corroboration of Information Used as Facts Available
- E. Recommendation

[FR Doc. 2015–30500 Filed 11–30–15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876, A–489–822]

Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty orders on welded line pipe from the Republic of Korea (Korea) and the Republic of Turkey (Turkey).

DATES: *Effective Date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT: Ross Belliveau (Korea) or David Crespo (Turkey), AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4952 and (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on October 13, 2015, the Department published its affirmative

final determinations in the less-than-fair-value (LTFV) investigations of welded line pipe from Korea and Turkey.¹ Pursuant to section 735(e) of the Act and 19 CFR 351.224(f), the Department published its amended final determination in the LTFV investigation of welded line pipe from Korea on November 10, 2015.² On November 20, 2015, the ITC notified the Department of its affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of welded line pipe from Korea and Turkey.³

Scope of the Orders

The merchandise covered by these orders is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of these orders.

The welded line pipe that is subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for

¹ See *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) (*Turkey Final Determination*), and *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015).

² See *Welded Line Pipe From the Republic of Korea: Amended Final Determination of Sales at Less Than Fair Value*, 80 FR 69637 (November 10, 2015).

³ See Letter to Christian Marsh, Deputy Assistant Secretary of Commerce for Enforcement and Compliance, from Meredith Broadbent, Chairman of the U.S. International Trade Commission, regarding certain welded line pipe from Korea and Turkey (November 20, 2015). See also *Certain Welded Line Pipe from Korea and Turkey*, USITC Investigation Nos. 701–TA–525 and 731–TA–1260–1261 (Final), USITC Publication 4580 (November 2015).

⁸ *Id.*

⁹ See the *Order* at 52 FR 6996.

convenience and customs purposes, the written description of the scope of these orders is dispositive.

Antidumping Duty Orders

As stated above, on November 20, 2015, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determinations in these investigations, in which it found material injury with respect to welded line pipe from Korea and Turkey.⁴ Therefore, in accordance with section 735(c)(2) of the Act, we are issuing these antidumping duty orders. Because the ITC determined that imports of welded line pipe from Korea and Turkey are materially injuring a U.S. industry, unliquidated entries of such merchandise from Korea and Turkey, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of welded line pipe from Korea and Turkey. Antidumping duties will be assessed on unliquidated entries of welded line pipe from Korea and Turkey entered, or withdrawn from warehouse, for consumption on or after May 22, 2015, the date of publication of the preliminary determinations,⁵ but

will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all relevant entries of welded line pipe from Korea and Turkey. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.⁶ The relevant all-others rates apply to all producers or exporters not specifically listed. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from Turkey will be adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from Turkey.⁷

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than

four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of welded line pipe from Korea and Turkey, we extended the four-month period to six months in each case.⁸ In the underlying investigations, the Department published the preliminary determinations on May 22, 2015. Therefore, the extended period, beginning on the date of publication of the preliminary determinations, ended on November 18, 2015. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of welded line pipe from Korea and Turkey entered, or withdrawn from warehouse, for consumption after November 18, 2015, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

The weighted-average dumping margins are as follows:

		Exporter/ Producer	Dumping margins (percent)	
Korea		Hyundai HYSCO	6.23	
		SeAH Steel Corporation	2.53	
		All Others	4.38	
		Exporter/ Producer	Dumping margins (percent)	Cash deposit (percent)
Turkey		Borusan Istikbal Ticaret	22.95	0.00
		Borusan Mannesmann Boru Sanayi ve Ticaret A.S.	22.95	0.00
		Çayirova Boru Sanayi ve Ticaret A.S./Yücel Boru İthalat-İhracat ve Pazarlama A.S.	22.95	22.09
		Tosçelik Profil ve Sac Endustrisi A.S./Tosyali Dis Ticaret A.S.	6.66	5.80
		All Others	7.10	6.24

Note: The cash deposit rates are adjusted to account for the applicable export subsidy rate of 27.32 percent for Borusan Istikbal Ticaret and Borusan Mannesmann Boru Sanayi ve Ticaret A.S.; and 0.86 percent for Çayirova Boru Sanayi ve Ticaret A.S./Yücel Boru İthalat-İhracat ve Pazarlama A.S., Tosçelik Profil ve Sac Endustrisi A.S./Tosyali Dis Ticaret A.S., and all other exporters/producers in Turkey.

⁴ Id.

⁵ See *Welded Line Pipe From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 29620 (May 22, 2015) (Korea

Preliminary Determination); and *Welded Line Pipe From the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 29617 (May 22, 2015) (Turkey *Preliminary Determination*).

⁶ See section 736(a)(3) of the Act.

⁷ See *Turkey Final Determination*, 80 FR at 61364.

⁸ See *Korea Preliminary Determination* and *Turkey Preliminary Determination*.

This notice constitutes the antidumping duty orders with respect to welded line pipe from Korea and Turkey pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: November 23, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015-30506 Filed 11-30-15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482-4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (“the Act”), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (“the Department”) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual

examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (“APO”) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in

which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after December 2015, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its “Opportunity to Request Administrative Review” notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of December 2015,¹ interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

¹ Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Antidumping Duty Proceedings	
BRAZIL: Carbon Steel Butt-Weld Pipe Fittings A-351-602	12/1/14-11/30/15
CHILE: Certain Preserved Mushrooms A-337-804	12/1/14-11/30/15
GERMANY: Non-Oriented Electric Steel A-428-843	5/22/14-11/30/15
INDIA:	
Carbazole Violet Pigment 23 A-533-838	12/1/14-11/30/15
Certain Hot-Rolled Carbon Steel Flat Products A-533-820	12/1/14-11/30/15
Commodity Matchbooks A-533-848	12/1/14-11/30/15
Stainless Steel Wire Rod A-533-808	12/1/14-11/30/15
INDONESIA: Certain Hot-Rolled Carbon Steel Flat Products A-560-812	12/1/14-11/30/15
JAPAN:	
Non-Oriented Electrical Steel A-588-872	5/22/14-11/30/15
Prestressed Concrete Steel Wire Strand A-588-068	12/1/14-11/30/15
Welded Large Diameter Line Pipe A-588-857	12/1/14-11/30/15
REPUBLIC OF KOREA:	
Non-Oriented Electrical Steel A-580-872	5/22/14-11/30/15
Welded Astm A-312 Stainless Steel Pipe A-580-810	12/1/14-11/30/15
RUSSIA: Certain Hot-Rolled Carbon Steel Flat Products A-821-809	12/19/14-11/30/15
SOCIALIST OF REPUBLIC OF VIETNAM: Uncovered Innerspring Units A-552-803	12/1/14-11/30/15
SOUTH AFRICA: Uncovered Innerspring Units A-791-821	12/1/14-11/30/15
SWEDEN: Non-Oriented Electrical Steel A-401-809	5/22/14-11/30/15
TAIWAN:	
Carbon Steel Butt-Weld Pipe Fittings A-583-605	12/1/14-11/30/15
Non-Oriented Electrical Steel A-583-851	5/22/14-11/30/15
Steel Wire Garment Hangers A-583-849	12/1/14-11/30/15
Welded Astm A-312 Stainless Steel Pipe A-583-815	12/1/14-11/30/15
THE PEOPLE'S REPUBLIC OF CHINA:	
Carbazole Violet Pigment 23 A-570-892	12/1/14-11/30/15
Cased Pencils A-570-827	12/1/14-11/30/15
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules A-570-979	12/1/14-11/30/15
Hand Trucks and Certain Parts Thereof A-570-891	12/1/14-11/30/15
Honey A-570-863	12/1/14-11/30/15
Malleable Cast Iron Pipe Fittings A-570-881	12/1/14-11/30/15
Multilayered Wood Flooring A-570-970	12/1/14-11/30/15
Non-Oriented Electrical Steel A-570-996	2/21/14-11/30/15
Porcelain-on-Steel Cooking Ware A-570-506	12/1/14-11/30/15
Silicomanganese A-570-828	12/1/14-11/30/15
Countervailing Duty Proceedings	
INDIA:	
Carbazole Violet Pigment 23 C-533-839	1/1/14-12/31/14
Certain Hot-Rolled Carbon Steel Flat Products C-533-821	1/1/14-12/31/14
Commodity Matchbooks C-533-849	1/1/14-12/31/14
INDONESIA: Certain Hot-Rolled Carbon Steel Products C-560-813	1/1/14-12/31/14
TAIWAN: Non-Oriented Electrical Steel C-583-852	3/25/14-12/31/14
THE PEOPLE'S REPUBLIC OF CHINA:	
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules C-570-980	1/1/14-12/31/14
Multilayered Wood Flooring C-570-971	1/1/14-12/31/14
Non-Oriented Electrical Steel C-570-997	3/25/14-12/31/14
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products C-549-818	1/1/14-12/31/14
Suspension Agreements	
MEXICO:	
Sugar A-201-845	12/19/14-11/30/15
Sugar C-201-846	12/19/14-12/31/14

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension

agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers)

which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative

review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.²

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.³ In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity

was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS") on Enforcement and Compliance's ACCESS Web site at <http://access.trade.gov>.⁴ Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of December 2015. If the Department does not receive, by the last day of December 2015, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

⁴ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

Dated: November 13, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015-30499 Filed 11-30-15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-967]

Aluminum Extrusions 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: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on aluminum extrusions from the People's Republic of China (PRC).¹ The period of review (POR) is May 1, 2013, through April 30, 2014. These final results cover 39 companies for which an administrative review was initiated and not rescinded.² The Department selected the following companies as mandatory respondents: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (collectively, Jangho), Union Industry (Asia) Co., Ltd. (Union), and Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Ltd. (collectively, Guang Ya Group); Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton Aluminum Company Ltd. (collectively, Zhongya); and Xinya Aluminum & Stainless Steel Product Co., Ltd. (Xinya) (collectively, Guang Ya Group/Zhongya/Xinya).³

¹ The Department initiated this review on June 27, 2014. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 36462 (June 27, 2014) (*Initiation Notice*).

² This administrative review initially covered 155 companies. See *Initiation Notice*. However, on January 29, 2015, the Department rescinded this review with respect to 116 companies. See *Aluminum Extrusions From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 80 FR 4868 (January 29, 2015).

³ In prior segments of this proceeding the Department found that the Guang Ya Group, Zhongya, and Xinya were affiliated and should be treated as a single entity. See, e.g., *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission*, in Part, 2010/12, 79 FR 96 (January 2, 2014) and *Aluminum Extrusions From*

² See also the Enforcement and Compliance Web site at <http://trade.gov/enforcement/>.

³ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

The Department finds for these final results that Union made sales of subject merchandise at less than normal value. In addition, the Department determines that Jangho, Guang Ya Group/Zhongya/Xinya, and 15 other companies subject to this review did not demonstrate eligibility for a separate rate, and, accordingly, are to be considered part of the PRC-wide entity. We also determine for these final results that one company, Xin Wei Aluminum Company Limited (Xin Wei), had no shipments.

DATES: *Effective Date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT: Deborah Scott, Mark Flessner, or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2657, (202) 482-6312 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2015, the Department published the *Preliminary Results* of this administrative review.⁴ At that time, we invited interested parties to comment on the *Preliminary Results*. On June 10, 2015, we received comments from the Aluminum Extrusions Fair Trade Committee (Petitioner) on the calculation of the margin for Union.⁵ On July 8, 2015, we received case briefs from Petitioner⁶ and Zhongya.⁷ On July 15, 2015, we received rebuttal briefs

from Jangho⁸ and Petitioner.⁹ On September 25, 2015, the Department extended the deadline for the final results until November 5, 2015.¹⁰

Scope of the Order

The merchandise covered by the *Order*¹¹ is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).¹²

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00,

8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is incorporated herein by reference. A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum, follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to

the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013, 79 FR 78784 (December 31, 2014) (*2012–2013 Final Results*).

⁴ See *Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 32347 (June 8, 2015) (*Preliminary Results*) and the accompanying memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China: 2013–2014," dated June 1, 2015 (*Preliminary Decision Memorandum*).

⁵ See letter from Petitioner to the Secretary of Commerce entitled, "Aluminum Extrusions from the People's Republic of China: Comments on Union's Preliminary Margin Calculations," dated June 10, 2015.

⁶ See letter from Petitioner to the Secretary of Commerce entitled, "Aluminum Extrusions from the People's Republic of China: Case Brief of the Aluminum Extrusions Fair Trade Committee," dated July 8, 2015.

⁷ See letter from Zhongya to the Secretary of Commerce entitled, "Aluminum Extrusions from China: Zhongda {sic} Case Brief," dated July 8, 2015.

⁸ See letter from Jangho to the Secretary of Commerce entitled, "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd.," dated July 15, 2015.

⁹ See letter from Petitioner to the Secretary of Commerce entitled, "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief of the Aluminum Extrusions Fair Trade Committee," dated July 15, 2015.

¹⁰ See memorandum from Mark Flessner to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Aluminum Extrusions from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review," dated September 25, 2015.

¹¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (*Order*).

¹² For a complete description of the scope of the *Order*, see Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, "Aluminum Extrusions from the People's Republic of China: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: 2013–2014," dated concurrently with this notice (Issues and Decision Memorandum).

registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/enforcement/frn/index.html>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on an analysis of the comments received from interested parties and a review of the record, the Department corrected calculation errors for the final adjusted margin to be applied to Union. For a full explanation, see the Issues and Decision Memorandum at Comment 2. This recalculation of Union's rate affected the rate for other companies; see the section below entitled, "Rate for Non-Examined Companies Which Are Eligible for a Separate Rate." The Department also reconsidered the necessity of having applied adverse facts available in the *Preliminary Results* with respect to Jangho and Guang Ya Group/Zhongya/Xinya in light of the Department's recent change of practice concerning the conditional review of the PRC-wide entity.¹³ For additional explanation, see the Issues and Decision Memorandum at "Application of Facts Available and Use of Adverse Inference" and Comments 4 and 5.

Companies Eligible for a Separate Rate

In our *Preliminary Results*, we determined that 11 companies, plus Union, are eligible for a separate rate.¹⁴ These companies are: Allied Maker Limited; Changzhou Changzheng Evaporator Co., Ltd.; Dongguan Aoda Aluminum Co., Ltd.; Josthere Co., Ltd.; Kam Kiu Aluminium Products Sdn Bhd; Kromet International Inc. (Kromet); Metaltek Group Co., Ltd.; Permasteelisa South China Factory; Permasteelisa Hong Kong Ltd.; Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; and tenKsolar (Shanghai) Co., Ltd. We received no information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination. Therefore, the

Department continues to find that these 12 companies are eligible for a separate rate.

Rate for Non-Examined Companies Which Are Eligible for a Separate Rate

Neither the Tariff Act of 1930, as amended (the Act), nor the Department's regulations address the establishment of the rate applied to individual separate rate companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in administrative reviews involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in a market-economy antidumping investigation. Section 735(c)(5)(A) of the Act instructs the Department to avoid calculating an all-others rate using any rates that are zero, *de minimis*, or based entirely on facts available in investigations. Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, the Department may use "any reasonable method" for assigning an all-others rate.

In the *Preliminary Results*, we assigned the rate of 32.79 percent, the most recent rate (from the less than fair value investigation) calculated for the non-examined separate rate respondents, to the non-examined separate rate respondents in the instant review.¹⁵ However, we have determined in these Final Results that the methodology used in the *Preliminary Results* was predicated on the erroneous calculation of a rate of zero for Union. As Union's rate at these Final Results is neither zero nor *de minimis*, we are applying Union's calculated rate to the non-examined, separate rate companies in accordance with section 735(c)(5) of the Act. For a full explanation, see the accompanying Issues and Decision Memorandum at Comment 3.

Determination of No Shipments

One company remaining under review, Xin Wei, timely submitted a certification indicating that it had no sales, shipments, or entries of subject merchandise during the POR.¹⁶ Consistent with our practice, the Department requested that CBP conduct

a query on potential shipments made by Xin Wei during the POR; CBP provided no evidence that contradicted Xin Wei's claim of no shipments. Based on Xin Wei's no-shipment certification and our analysis of the CBP information, in the *Preliminary Results* we determined that Xin Wei had no shipments during the POR.¹⁷ No party commented on that determination. The Department will issue appropriate instructions to CBP.¹⁸

PRC-Wide Entity

In the *Preliminary Results*, the Department determined that the mandatory respondents Jangho and Guang Ya Group/Zhongya/Xinya were not eligible for a separate rate, and, accordingly, were part of the PRC-wide entity.¹⁹ For purposes of these Final Results, the Department continues to find that Jangho and Guang Ya Group/Zhongya/Xinya are not eligible for a separate rate and are part of the PRC-wide entity. For a full explanation, see the Issues and Decision Memorandum at Comments 4 and 5.

In addition, 14 companies still subject to these final results are not eligible for separate-rate status because they did not submit separate-rate applications or certifications; those companies are: Aluminicaste Fundicion de Mexico; China Zhongwang Holdings, Ltd.; Classic & Contemporary Inc.; Dongguan Golden Tiger; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Gold Mountain International Development, Ltd.; Golden Dragon Precise Copper Tube Group, Inc.; Metaltek Metal Industry Co., Ltd.; Nidec Sankyo Singapore Pte. Ltd.; Press Metal International Ltd.; tenKsolar, Inc.; Tianjin Jinmao Import & Export Corp., Ltd.; WTI Building Products, Ltd.; and Zahoqing China Square Industry Limited/Zhaoqing China Square Industry Limited.²⁰ Further, one company still under review, Shenyang Yuanda Aluminium Industry Engineering Co., Ltd., submitted a separate-rate application that did not demonstrate eligibility for a separate

¹⁷ See *Preliminary Results*, 80 FR at 32349.

¹⁸ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65695 (October 24, 2011).

¹⁹ See *Preliminary Results*, 80 FR at 32350.

²⁰ One company, Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya), was determined to have been succeeded by Guangdong Zhongya Aluminum Company Limited (Guangdong Zhongya) in a changed circumstances review. See *Aluminum Extrusions From the People's Republic of China: Final Results of Changed Circumstances Review*, 77 FR 54900 (September 6, 2012). Thus, despite the fact that a review was initiated of New Zhongya, it is not being included among these 14 companies because its successor in interest, Guangdong Zhongya, is part of the Guang Ya Group/Zhongya/Xinya single entity.

¹³ See *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, 65970 (November 4, 2013) (*Conditional Review of NME Entity Notice*).

¹⁴ See *Preliminary Results*, 80 FR at 32348.

¹⁵ *Id.*, at 32349.

¹⁶ See letter from Xin Wei to the Secretary of Commerce entitled, "Aluminum Extrusions from the People's Republic of China: Certification of No Sales, Shipments, or Entries," dated August 26, 2014.

rate. As a result, the Department finds for these final results that these 15 companies are also 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.²¹ 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 in this review, the entity is not under review and the entity's rate from the previous administrative review (*i.e.*, 33.28 percent) is not subject to change.²²

Adjustments for Countervailable Subsidies

Because no mandatory respondent established eligibility for an adjustment under section 777A(f) of the Act for countervailable domestic subsidies, the Department, for these final results, did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for Union or the separate-rate recipients.²³

Pursuant to section 772(c)(1)(C) of the Act, the Department made an adjustment for countervailable export subsidies. For Union, we made adjustments to its reported U.S. price.²⁴ For the companies eligible for a separate rate, because all of these companies participated in the second countervailing duty administrative

review,²⁵ an adjustment has been made based on the countervailable export subsidy found for the non-selected companies in the final results of the second countervailing duty administrative review (or its own calculated rate, in the case of Kromet).²⁶ For a full explanation, *see* the Issues and Decision Memorandum at Comment 3.

For the PRC-wide entity, since the entity is not currently under review, no adjustments were warranted to its rate, as its rate is not subject to change.²⁷

Final Results of Review

The Department determines that the following weighted-average dumping margins exist for the POR for these final results:

Exporter	Weighted-average dumping margin (%)	Margin adjusted for liquidation and cash deposit purposes ²⁸ (%)
Allied Maker Limited	86.01	85.73
Changzhou Changzheng Evaporator Co., Ltd	86.01	85.73
Dongguan Aoda Aluminum Co., Ltd	86.01	85.73
Justhere Co., Ltd	86.01	85.73
Kam Kiu Aluminium Products Sdn Bhd ²⁹	86.01	85.73
Kromet International Inc	86.01	85.66
Metaltek Group Co., Ltd	86.01	85.73
Permasteelisa Hong Kong Ltd ³⁰	86.01	85.73
tenKsolar (Shanghai) Co., Ltd	86.01	85.73
Union Industry (Asia) Co., Ltd	86.01	85.73

Additionally, the Department determines for these final results that the following companies are part of the PRC-wide entity: Jangho (which includes Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd.); Guang Ya Group/Zhongya/Xinya (which includes Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah

International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Ltd.; Guangdong Zhongya Aluminium Company Limited; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; and Xinya Aluminum & Stainless Steel Product Co., Ltd.); Aluminicaste Fundicion de Mexico; China Zhongwang Holdings, Ltd.; Classic & Contemporary Inc.; Dongguan Golden Tiger; Dongguan Golden Tiger Hardware

Industrial Co., Ltd.; Gold Mountain International Development, Ltd.; Golden Dragon Precise Copper Tube Group, Inc.; Metaltek Metal Industry Co., Ltd.; Nidec Sankyo Singapore Pte. Ltd.; Press Metal International Ltd.; Shenyang Yuanda Aluminium Industry Engineering Co., Ltd.; tenKsolar, Inc.; Tianjin Jinmao Import & Export Corp., Ltd.; WTI Building Products, Ltd.; and Zahoqing China Square Industry Limited/Zhaoqing China Square

²¹ See *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, 65970 (November 4, 2013) (*Conditional Review of NME Entity Notice*).

²² See *2012–2013 Final Results*, 79 FR at 78787.

²³ See Preliminary Decision Memorandum at 34 and Attachment 1.

²⁴ See Memorandum from Mark Flessner to the File entitled, “2013–2014 Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Analysis of the Final Results Margin Calculation for Union Industry (Asia) Co., Ltd.,” dated concurrently with this notice (Union Final Analysis Memorandum).

²⁵ See *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788, 78789–90 (December 31, 2014).

²⁶ See Preliminary Decision Memorandum at Attachment 1.

²⁷ See *2012–2013 Final Results*, 79 FR at 78787; *see also Conditional Review of NME Entity Notice*, 78 FR 65970. As the rate for the PRC-wide entity is not subject to change in the instant review, the margin from the *2012–2013 Final Results* that we are applying to the PRC-wide entity in the instant review is net of countervailable domestic and export subsidies.

²⁸ See the memorandum from Mark Flessner to the File entitled, “Aluminum Extrusions from the People's Republic of China: Export Subsidy Adjustment Memorandum for the Final Results of

Antidumping Duty Administrative Review; 2013–2014,” dated concurrently with this notice.

²⁹ Although the Department initiated a review for both Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. and Kam Kiu Aluminium Products Sdn Bhd, it is apparent from the company's separate-rate application that Kam Kiu Aluminium Products Sdn Bhd is the exporter and Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. is a producer only; thus, Kam Kiu Aluminium Products Sdn Bhd is the appropriate party to grant the separate rate status.

³⁰ Although the Department initiated a review for Permasteelisa South China Factory and Permasteelisa Hong Kong Ltd., it is apparent from the company's separate-rate application that Permasteelisa Hong Kong Ltd. is the exporter and Permasteelisa South China Factory is a producer only; thus, Permasteelisa Hong Kong Ltd. is the appropriate party to grant the separate rate status.

Industry Limited. The rate previously established for the PRC-wide entity in the previous administrative review is 33.28 percent.³¹

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review in the **Federal Register**. Consistent with the Department's assessment practice in NME cases, 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 PRC-wide rate.³² In addition, if the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under the exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.³³

For each individually-examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, the Department will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer- (or customer-) specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer- (or customer-) specific assessment rate is zero or *de minimis*, the Department will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For the other companies eligible for a separate rate, the Department will instruct CBP to assess antidumping duties on the company's entries of subject merchandise at the rates listed above in the section "Final Results of Review."

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Union and the other companies eligible for a separate rate, the cash deposit rate will that listed above in the section "Final Results of Review"; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have a separate rate, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding in which the exporter was reviewed; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that established for the PRC-wide entity of 33.28 percent;³⁴ 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 producer or exporter that supplied that non-PRC exporter with the subject merchandise. The deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

The Department intends to disclose to the parties the calculations performed for these final results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

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 and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order Notification to Interested Parties

This notice serves as the only reminder to parties subject to 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), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: November 20, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Issues Raised in Case and Rebuttal Briefs

Summary
Background
Application of Facts Available and Use of Adverse Inference
Discussion of the Issues
Issue 1: Collapsing of Zhongya
Issue 2: Improper Calculation of Union's Dumping Margin
Issue 3: Assignment of Union's Revised Dumping Margin to the Separate Rate Respondents
Issue 4: Use of Union's Recalculated Margin as the AFA Rate
Issue 5: Revision of the PRC-Wide Rate to Reflect Union's Recalculated Dumping Margin
Conclusion

[FR Doc. 2015–30502 Filed 11–30–15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating the five-year review ("Sunset Review") of the antidumping and countervailing duty ("AD/CVD") orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* December 1, 2015.

³¹ See 2012–2013 Final Results, 79 FR at 78787.

³² See *Non-Market Economy Antidumping Proceedings; Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) (Assessment Practice Refinement).

³³ *Id.*

³⁴ See 2012–2013 Final Results, 79 FR at 78787.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset

Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty orders:

<u>DOC</u> <u>Case No.</u>	<u>ITC</u> <u>Case No.</u>	<u>Country</u>	<u>Product</u>	<u>Department</u> <u>Contact</u>
A-570-504	731-TA-282	PRC	Petroleum Wax Candles (4 th Review)	Matthew Renkey (202) 482-2312

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: <http://enforcement.trade.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"), can be found at 19 CFR 351.303.¹

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.² Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.³ The formats for the revised certifications are provided at the end of the *Final Rule*.

The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).⁴ Parties are advised to review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at <http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt>, prior to submitting factual information in these segments.⁵

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the

public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order ("APO") to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.⁶

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's

¹ See also *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

² See section 782(b) of the Act.

³ See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("Final Rule") (amending 19 CFR 351.303(g)).

⁴ See *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013).

⁵ See *Extension of Time Limits*, 78 FR 57790 (September 20, 2013).

⁶ See 19 CFR 351.218(d)(1)(iii).

regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: November 16, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015-30497 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE212

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability; extension of public comment period.

SUMMARY: NOAA's National Marine Fisheries Service (NMFS) announces the extension of the comment period for the notice of availability of the public draft of the Endangered Species Act Coastal Multispecies Recovery Plan for the California Coastal Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), the Northern California steelhead (*O. mykiss*) Distinct Population Segment (DPS), and the Central California Coast steelhead (*O. mykiss*) DPS, which published on October 5, 2015. These species spawn and rear in streams and rivers along the central and northern California coast, and in tributaries to San Francisco Bay. NMFS is soliciting review and comment from the public

and all interested parties on the Public Draft Recovery Plan, and will consider all substantive comments received during the review period before submitting the Recovery Plan for final approval. The comment period is being extended—from December 4, 2015, to January 18, 2016—to provide additional opportunity for public comment.

DATES: The deadline for receipt of comments on the Public Draft Recovery Plan published on October 5, 2015 (80 FR 60125), is extended to close of business on January 18, 2016.

ADDRESSES: You may submit comments on the Public Draft Recovery Plan by the following methods:

- **Electronic Submissions:** Submit all electronic public comments via: WCR_CMSRecoveryplan.comments@noaa.gov
- **Mail:** Recovery Team, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404.

Instructions: Comments must be submitted by one of the above methods to ensure comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Public Draft Recovery Plan are available online at:

http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/north_central_california_coast/north_central_california_coast_salmon_recovery_domain.html. A CD-ROM of these documents can be obtained by emailing a request to Andrea.Berry@noaa.gov or by writing to: Recovery Team, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404.

FOR FURTHER INFORMATION CONTACT:

Korie Schaeffer, (707) 575-6087, Korie.Schaeffer@noaa.gov, or Erin Seghesio, (707) 578-8515, Erin.Seghesio@noaa.gov.

SUPPLEMENTARY INFORMATION:

Extension of Comment Period

On October 5, 2015, (80 FR 60125) we (NMFS) published in the **Federal Register** a request for public comment on the notice of availability of the Coastal Multispecies Recovery Plan for the California Coastal Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), the Northern California steelhead (*O.*

mykiss) Distinct Population Segment (DPS), and the Central California Coast steelhead (*O. mykiss*) DPS. The public comment period for this action is set to end on December 4, 2015. The comment period is being extended through January 18, 2016, to provide additional opportunity for public comment.

Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) requires we develop and implement recovery plans for the conservation and survival of threatened and endangered species under our jurisdiction, unless it is determined that such plans would not promote the conservation of the species. The Public Draft Recovery Plan was developed for three salmon and steelhead species: The California Coastal (CC) Chinook salmon ESU, and the Northern California (NC) and Central California Coast (CCC) steelhead DPSs. Between 1997 and 2000, NMFS listed the CCC steelhead DPS (62 FR 43937; August 18, 1997), the CC Chinook salmon ESU (64 FR 50394; September 16, 1999), and the NC steelhead DPS (65 FR 36074; June 7, 2000), as threatened under the ESA due to the precipitous and ongoing declines in their populations.

Our goal is to restore the threatened CC Chinook salmon, and NC and CCC steelhead to the point where they are self-sustaining populations within their ecosystems and no longer need the protections of the ESA.

The Public Draft Recovery Plan

The ESA requires recovery plans incorporate, to the maximum extent practicable: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goal for the conservation and survival of the species; and (3) estimates of the time required and costs to implement recovery actions.

The Public Draft Recovery Plan provides background on the natural history, population trends and the potential threats to the viability of CC Chinook salmon, and NC and CCC steelhead. The Public Draft Recovery Plan lays out a recovery strategy to address conditions and threats based on the best available science and incorporates objective, measurable criteria for recovery. The Public Draft Recovery Plan is not regulatory, but presents guidance for use by agencies and interested parties to assist in the recovery of CC Chinook salmon, and NC and CCC steelhead. The Public Draft

Recovery Plan identifies actions needed to achieve recovery by improving population and habitat conditions and addressing threats to the species; links management actions to a research and monitoring program intended to fill data gaps and assess effectiveness of actions; incorporates an adaptive management framework by which management actions and other elements may evolve as we gain information through research and monitoring; and describes agency guidance on time lines for reviews of the status of species and recovery plans. To address threats related to the species, the Public Draft Recovery Plan references many of the significant efforts already underway to restore salmon and steelhead access to high quality habitat and to improve habitat previously degraded.

Recovery of CC Chinook salmon, and NC and CCC steelhead will require a long-term effort in cooperation and coordination with Federal, state, tribal and local government agencies, and the community. Consistent with the Recovery Plan, we will implement relevant actions for which we have authority, work cooperatively on implementation of other actions, and encourage other Federal and state agencies to implement recovery actions for which they have responsibility and authority.

In compliance with the requirements of the ESA section 4(f), NMFS is providing public notice and an opportunity to review and comment on the Public Draft Recovery Plan for CC Chinook salmon, and NC and CCC steelhead prior to its final approval.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 25, 2015.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015-30408 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its

Observer Policy Committee meeting on Thursday, December 17, 2015 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, December 17, 2015 at 9 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739-3000; fax: (401) 732-9309.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Observer Committee will focus its discussion on the omnibus alternatives in the Omnibus Industry-Funded Monitoring (IFM) Amendment. The Committee may receive a brief update on the revised economic analysis for herring and mackerel alternatives, only if the analysis is sufficiently complete before the meeting date.

Discussion topics include: To review/discuss omnibus alternatives in the IFM Amendment; review primary components to the omnibus alternatives, including standard cost responsibilities, administrative requirements for monitoring service providers, the framework adjustment process, and the prioritization process; review/discuss data utility considerations for observer/at-sea monitoring, portside sampling, and electronic monitoring; review/discuss revised cost assumptions for electronic monitoring and portside sampling; review/discuss the monitoring set-aside option in the IFM amendment. The Committee will also develop recommendations regarding the selection of preferred omnibus alternatives for the omnibus IFM amendment and possibly review revised economic analysis for herring and mackerel alternatives. The Committee may address other business as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015-30419 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice; public hearing (webinar).

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public hearing to solicit public comments on Electronic Reporting for For-Hire Vessels via webinar.

DATES: The webinar will be held Thursday, December 17, 2015, beginning at 6 p.m. and will conclude no later than 9 p.m. Written public comments must be received on or before 5 p.m. E.S.T., Friday, December 18, 2015.

ADDRESSES: The public documents can be obtained by contacting the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348-1630 or on their Web site at www.gulfcouncil.org.

Meeting addresses: The public hearing will be held via webinar. You may register at <https://attendee.gotowebinar.com/register/6492235001962146818>.

Public comments: Comments may be submitted online through the Gulf Council's public portal by visiting www.gulfcouncil.org and clicking on "CONTACT US".

FOR FURTHER INFORMATION CONTACT: Dr. John Froeschke, Fishery Biologist/Statistician, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630; fax: (813) 348-1711; email: john.froeschke@gulfcouncil.org

SUPPLEMENTARY INFORMATION: The Council is considering several changes that would require electronic reporting for the Reef Fish and Coastal Migratory Pelagic (CMP) species for the for-hire operators. The agenda for the public hearing/webinar is as follows: Council staff will brief the public on the proposed Amendment then Council staff will open the meeting for questions and public comments.

Register to participate at <https://attendee.gotowebinar.com/register/6492235001962146818>.

Special Accommodations

Requests for auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**), at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015-30418 Filed 11-30-15; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, December 4, 2015.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at <http://www.cftc.gov>.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202-418-5964.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2015-30563 Filed 11-27-15; 4:30 pm]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Defense Advisory Committee on Military Personnel Testing.

DATES: Thursday, January 7, 2016, from 9:00 a.m. to 4:00 p.m. and Friday, January 8, 2016, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The Pine Inn, Ocean Avenue, between Lincoln and Monte Verde Street, Carmel, California.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (title 5, United States Code (U.S.C.), Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150.

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing computerized tests for military enlistment screening.

Agenda: The agenda includes an overview of current enlistment test development timelines, test development strategies, and planned research for the next 3 years.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public.

Committee's Designated Federal Officer or Point of Contact: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271.

Persons desiring to make oral presentations or submit written statements for consideration at the committee meeting must contact Dr. Jane M. Arabian at the address or telephone number in the **FOR FURTHER INFORMATION CONTACT** section no later than December 31, 2015.

Dated: November 25, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015-30478 Filed 11-30-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 15-76]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604-1546/(703) 607-5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15-76 with attached Policy Justification and Sensitivity of Technology.

Dated: November 25, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

NOV 09 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-76, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of the United Kingdom for defense articles and services estimated to cost \$80 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

for J. W. Rixey
Vice Admiral, USN
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology



BILLING CODE 5001-06-C

Transmittal No. 15-76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Kingdom.

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$80 million
Other	\$ 0 million

TOTAL	\$80 million
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(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): Five hundred (500) AGM-114R Hellfire II Semi-Active Laser (SAL) Missiles.

(iv) *Military Department:* Air Force (YAY), Amendment 4.

(v) *Prior Related Cases, if any:*

FMS Case UK-B-WKG—\$113,000—Apr 1998

FMS Case UK-B-WKI—\$21M—Sep 2007

FMS Case UK-D-YAC—\$22M—May 2008

FMS Case UK-D-YAF—\$21M—Mar 2011

FMS Case UK-D-YAY—\$67M—Aug 2013

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

* As defined in Section 47(6) of the Arms Export Control Act

(viii) *Date Report Delivered to Congress:* 9 NOV 2015.

POLICY JUSTIFICATION*United Kingdom—Hellfire Missiles*

The Government of the United Kingdom (UK) requested a possible sale of five hundred (500) AGM-114R Hellfire II Semi-Active Laser (SAL) Missiles. The estimated cost is \$80 million.

This sale directly contributes to the foreign and national security policies of the United States by enhancing the close air support capability of the UK in support of NATO and other coalition operations. Commonality between close air support capabilities greatly increases interoperability between our two countries' military and peacekeeping forces and allows for greater burden sharing.

The proposed sale improves the UK's ability to meet current and future threats by providing close air support to counter enemy attacks on coalition ground forces in U.S. CENTCOM's area of responsibility. The UK currently has Hellfire missiles in its inventory and will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There is no principal contractor for this sale as the missiles are coming from U.S. Army stock. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the UK.

There will be no adverse impact on United States defense readiness as a result of this proposed sale. All defense articles and services are approved for release by our foreign disclosure office.

Transmittal No. 15-76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex—Item No. vii

(viii) *Sensitivity of Technology:*

1. *AGM-114R Hellfire.* The AGM-114R Hellfire II Semi-Active Laser (SAL) Missiles are rail-launched guided missiles developed and produced by Lockheed Martin. The weapon system hardware, as an "All Up Round," is UNCLASSIFIED. The highest level of

classified information to be disclosed regarding the AGM-114R Hellfire II missile software is SECRET. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is SECRET and the highest level that must be disclosed for production, maintenance, or training is CONFIDENTIAL. Software sensitivity is primarily in the programs that instruct the system on how to operate in the presence of countermeasures.

2. If a technologically advanced adversary obtained knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the UK can provide substantially the same degree of protection for the AGM-114R Hellfire II missiles as the United States Government. Transfer of these missiles to the UK is necessary in the furtherance of United States foreign policy and national security objectives.

4. All defense articles and services listed in this transmittal are authorized for release and export to the Government of the United Kingdom.

[FR Doc. 2015-30470 Filed 11-30-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Transportation Regulation, Part IV**

AGENCY: United States Transportation Command (USTRANSCOM), DoD.

ACTION: Announcement.

SUMMARY: The Department of Defense has rescinded the Defense Transportation Regulation Part IV (Personal Property), (DTR 4500.9R), Appendices in connection with the Defense Personal Property Program (DP3) Phase III Intra-Country Moves (iCM).

FOR FURTHER INFORMATION CONTACT: Mr. Jim Teague, United States Transportation Command, TCJ4-PI, 508 Scott Drive, Scott Air Force Base, IL 62225-5357; (618) 220-4803.

SUPPLEMENTARY INFORMATION:

The following DTR Part IV Appendices have been rescinded: Appendix V.E.3 (CSS) Appendix V.F.3 (Best Value) Appendix V.G.3 (TPPS) Appendix V.J.3 (Shipment Management)

Intra-Country type personal property shipments will be solicited under SDDC International Tender provisions (*e.g.*, channel, code of service, rate filing etc.), and/or under Military Services Personal Property Shipping Office Direct Procurement Method contract provisions.

A complete version of the DTR is available via the Internet on the USTRANSCOM homepage at <http://www.transcom.mil/dtr/dtrp4.cfm>.

Dated: November 24, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015-30373 Filed 11-30-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 15-78]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT:

Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604-1546/ (703) 607-5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15-78 with attached Policy Justification.

Dated: November 25, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-6408

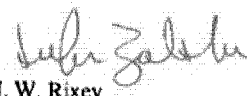
The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

NOV 04 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-78, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Government of Lithuania for defense articles and services estimated to cost \$599 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,


J. W. Rixey
Vice Admiral, USN
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology



BILLING CODE 5001-06-C

Transmittal No. 15-78

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

- (i) *Prospective Purchaser:* Lithuania
(ii) *Total Estimated Value:*

Major Defense Equipment *	\$462 million
Other	\$137 million

TOTAL \$599 million

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

Major Defense Equipment (MDE):

Eighty-four (84) M 1126 Stryker Infantry Carrier Vehicles (ICV) with the ATK 30mm cannon, the XM813 30mm cannon, or a European variant with the Remote Weapon Station.

Eighty-four (84) M2 Flex Machine Guns.

Also included are the following non-MDE: ICV-30 package including contractor logistics support, support equipment, spare parts, armaments, two (2) AN/PRC-152 Radios per vehicle, one (1) AN/PSN-13 DAGR per vehicle, one (1) VIC-3 per vehicle, training aids/

devices/simulators & simulations (TADSS), translated technical manuals with laptop computers, training, Foreign Service Representatives (FSRs), OCONUS Contractor vehicle deprocessing services and technical assistance.

(iv) *Military Department:* U.S. Army (UDL).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold:
See Attached Annex.

(viii) *Date Report Delivered to Congress:* 04 NOV 2015.

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Lithuania—M 1126 Stryker Infantry Carrier Vehicles (ICV) with 30mm cannon and M2 Machine Guns, and Related Support Equipment

The Government of Lithuania has requested a sale of eighty-four (84) M 1126 Stryker Infantry Carrier Vehicles (ICV) with the ATK 30mm cannon, the XM813 30mm cannon or a European variant with the Remote Weapon Station and eighty-four (84) M2 Flex Machine Guns. Additionally, they have requested the ICV-30 package, including contractor logistics support, support equipment, spare parts, armaments, two (2) AN/PRC-152 Radios per vehicle, one (1) AN/PSN-13 DAGR per vehicle, one (1) VIC-3 per vehicle, training aids/devices/simulators & simulations (TADSS), translated technical manuals with laptop computers, training, Foreign Service Representatives (FSRs), OCONUS Contractor vehicle deprocessing services and technical assistance. The total estimated value of MDE is \$462 million. The overall total estimated value is \$599 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally.

Lithuania's acquisition of the Stryker ICV system would represent a major advancement in capability for the Lithuanian Land Forces, filling a vital capability gap that is not currently addressed. The Stryker ICV system would provide maneuverability, speed, and firepower to the Lithuanian Land Forces and enhance Lithuania's ability to contribute to territorial defense and NATO and coalition operations. Lithuania will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor is unknown at this time. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require up to 30 U.S. Government or contractor representatives to travel to Lithuania. It is estimated that it will take up to 30 personnel to execute the managing, fielding, training, initial establishment of spare storage and maintenance facilities, and the execution of maintenance over a two-year period, beginning with the first fielding of vehicles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15-78

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex Item—No. vii

(vii) Sensitivity of Technology:

1. The following Major Defense Equipment items do not contain any sensitive technologies or classified material: 84 M1 126 Stryker Infantry Carrier Vehicles (ICV) with the ATK 30mm cannon, the XM813 30mm cannon or a European variant with Remote Weapons Station and M2 Flex Machine Guns.

2. The following Non-Major Defense Equipment items that contain sensitive technologies, but no classified material: Support equipment (COMSEC radios and GPS DAGRS). Lithuania is cleared to receive these items. The following Non-Major Defense Equipment items do not contain any sensitive technologies or classified material: Contractor Logistics Support, spare parts, Armaments, Command and Control Communications Computers Intelligence Surveillance and Reconnaissance, Training Aids/Devices/Simulators & Simulations (TADSS), translated technical manuals with laptop computers, training, Foreign Service Representatives, Outside Continental United States Contractor vehicle deprocessing services, and Technical Assistance.

3. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government.

4. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result is the sensitive technology were revealed to unauthorized persons.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Lithuania.

[FR Doc. 2015-30467 Filed 11-30-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 15-60]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604-1546/ (703) 607-5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15-60 with attached Policy Justification and Sensitivity of Technology.

Dated: November 25, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

NOV 09 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-60, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Government of Finland for defense articles and services estimated to cost \$150 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology



BILLING CODE 5001-06-C

Transmittal No. 15-60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* The Government of Finland.

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 100 million
Other	\$ 50 million
TOTAL	\$ 150 million

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

The Government of Finland has requested a possible sale of forty (40) Guided Multiple Launch Rocket System Pods: Fifteen Pods of M31A1 Unitary Missiles (6 missiles per pod for a total of 90 missiles) and 25 Pods of M30A1 Alternative Warhead Missiles (6 missiles per pod for a total of 150 missiles).

Also included with this request are publications, personnel training and

training equipment, software development, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Army (VAP & VAQ).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold:
See Attached Annex.

(viii) *Date Report Delivered to Congress:* 09 NOV 2015.

* as defined in Section 47(6) of the Arms Export Control Act

POLICY JUSTIFICATION

Finland—Guided Multiple Launch Rocket System (GMLRS) M31A1 Unitary and GMLRS M30A1 Alternative Warhead Rockets in Pods

The Government of Finland has requested a possible sale of forty (40) Guided Multiple Launch Rocket Pods: Fifteen Pods of M31A1 Unitary Missiles (6 missiles per pod for a total of 90 missiles) and 25 Pods of M30A1 Alternative Warhead Missiles (6 missiles per pod for a total of 150 missiles). Also included are publications, personnel training and training equipment, software development, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The total estimated cost is \$150 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in Europe. The proposed sale of the GMLRS M31A1 Unitary and M30A1 GMLRS Alternative Warhead Rockets will improve Finland's capability to meet current and future threats.

Finland will use this enhanced capability to strengthen and secure its national borders. Finland will have no difficulty absorbing these rocket pods into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin Missile and Fire Control in Grand Prairie, TX. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. or contractor representatives in Finland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex—Item No. vii

(vii) *Sensitivity of Technology:*

1. Guided Multiple Launch Rocket System (GMLRS) M31A1 is the Army's primary organic Joint Expeditionary, all-weather, 24/7, tactical GPS PPS precision-guided rocket. M31A1 is the primary rocket for units fielded with the High Mobility Artillery Rocket System (HIMARS) M142 and Multiple Launch Rocket System (MLRS) M270A1 Rocket/Missile Launcher platforms. The M31A1 provides close, medium, and long range precision and area fires to destroy, suppress, and shape threat forces and protect friendly forces. The M31A1 integrates guidance and control packages and an improved rocket motor achieving greater range and precision accuracy. The M31A1 Unitary is the only variant currently in production, integrating a multi-option mode proximity height of burst (HOB) sensor fuze and high explosive warhead making it an all-weather, low collateral damage, precision strike rocket. GMLRS Unitary expands the MLRS/HIMARS target set into urban and complex environments by adding, point, proximity and delay fuzing modes. The highest level of classified information that may be transferred by export of this munition is SECRET.

2. Guided Multiple Launch Rocket System (GMLRS) M30A1 will be the Army's primary organic Joint Expeditionary, all-weather, 24/7, tactical precision guided rocket. The M30A1 Alternative Warhead (AW) will be the primary munition for units fielded with the High Mobility Artillery Rocket System (HIMARS) and Multiple Launch Rocket System (MLRS) M270A1 Rocket/Missile Launcher platforms. M30A1 AW is designed to replace the M26 and M30 Dual Purpose Improved Conventional Munitions (DIPCM), to attack/neutralize/suppress/destroy area and precisely locate targets using indirect precision fires while greatly decreasing the probability of Unexploded Ordinance (UXO). M30A1 AW shares more than 90% commonality with the GMLRS M31A1 Unitary. The commonality includes the motor, GPS PPS inertial guidance and control systems, fuzing mechanisms and proximity multi-option HOB fuze capability. Only the warhead/payload is different. The highest level of classified information that may be transferred by export of this munition is SECRET.

3. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Finland.

[FR Doc. 2015–30468 Filed 11–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent To Grant a Partially/Co-Exclusive License; Envoy Flight Systems, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Envoy Flight Systems, Inc. located at 201 Ruthar Drive, Suite 3, Newark, Delaware 19711, a revocable, nonassignable, partially exclusive license throughout the United States (U.S.) in the fields of use for Portable Firefighting Systems and Cleaning Systems, but for Spray Cleaning and disinfection of food, flavors, paints, inks and desiccants; and a co-exclusive license throughout the U.S. in the fields of use for Water Desalination and Cleaning Systems for Health Products in the Government-Owned inventions described in U.S. Patent number 5,520,331 issued on May 28, 1996 entitled “Liquid Atomizing Nozzle” and U.S. Patent number 7,523,876 B2 issued on April 28, 2009 entitled “Adjustable Liquid Atomization Nozzle”.

ADDRESSES: Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Michelle Miedzinski, Code 5.0H, 22347 Cedar Point Road, Building 2185, Room 2160, Patuxent River, Maryland 20670.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, within fifteen (15) days of the date of this published notice.

FOR FURTHER INFORMATION CONTACT: Michelle Miedzinski, 301–342–1133, Naval Air Warfare Center Aircraft Division, 22347 Cedar Point Road, Building 2185, Room 2160, Patuxent River, Maryland 20670.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: November 24, 2015.

N.A. Hagerty-Ford,
Commander, Office of the Judge Advocate General, U. S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–30501 Filed 11–30–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE**Department of the Navy****Notice of Intent to Grant Exclusive Patent License: Lockmasters Incorporated****AGENCY:** Department of the Navy, DoD.**ACTION:** Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Lockmasters Incorporated a revocable, nonassignable, exclusive license for three years and a nonexclusive license thereafter to practice in the field of use of security locking devices in the United States and its territories, the Government-owned invention described in U.S. Patent Application 14/826014 entitled "Spindle Locator Tool", filed on Aug 13, 2015.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than [INSERT DATE 15 DAYS AFTER PUBLICATION FIRST APPEARS IN *Federal Register*].

ADDRESSES: Written objections should be directed to NAVFAC Engineering & Expeditionary Warfare Center, 1100 23rd Avenue, Port Hueneme, CA 93043-4370.

FOR FURTHER INFORMATION CONTACT: Victor Cai, Office of Research and Technology Applications, NAVFAC EXWC, 1100 23rd Avenue, Port Hueneme, CA 93043-4370, telephone 805-982-3009, email: victor.cai@navy.mil.

SUPPLEMENTARY INFORMATION: The Spindle Locator Tool enables identification of proper and improper placement of a spindle in a locking mechanism. Specifically, it will be used for the X-10 electromechanical lock which has experienced a spindle and cam interface issue that can result in lockouts requiring neutralization.

Authority: (35 U.S.C. 207, 37 CFR part 404)

Dated: November 24, 2015.

N.A. Hagerty-Ford,
Commander, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015-30491 Filed 11-30-15; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE**Department of the Navy****Notice of Intent to Prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Hawaii-Southern California Training and Testing and Notice of Public Scoping Meetings; Correction****AGENCY:** Department of the Navy, DoD.**ACTION:** Notice; correction.

SUMMARY: The Department of the Navy published a document in the *Federal Register* (80 FR 218) on November 12, 2015, announcing a Notice of Intent to prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Hawaii-Southern California Training and Testing and a Notice of Public Scoping Meetings. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT:

Nora Macariola-See, Naval Facilities Engineering Command, Pacific.
Attention: HSTT EIS/OEIS, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860-3134. 808-472-1402.

CORRECTION: In the *Federal Register* (80 FR 218) of November 12, 2015, on page 69952, in the third column, correct the mailed comments postmarked date to read January 12, 2016.

Dated: November 24, 2015.

N.A. Hagerty-Ford,
Commander, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015-30492 Filed 11-30-15; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE**Department of the Navy****Notice of Performance Review Board Membership****AGENCY:** Department of the Navy, DoD.**ACTION:** Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance

bonuses and basic pay increases. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

CAPT Mark Bruington
CAPT Robert Palisin
Dr. John Montgomery
Dr. Judith Lean
Dr. Thomas Killion
Dr. Walter Jones
LtGen Mark Brilakis
Mr. Anthony Cifone
Mr. William O'Donnell
Mr. Brian Persons
Mr. Bryan Wood
Mr. Dennis Biddick
Mr. Donald McCormack
Mr. Garry Newton
Mr. Gary Kessler
Mr. Gary Rensing
Mr. James McCarthy
Mr. James Meade
Mr. James Smerchansky
Mr. John Goodhart
Mr. John Pazik
Mr. John Thackrah
Mr. Joseph Ludovici
Mr. Mark Andress
Mr. Mark Honecker
Mr. Mark Ridley
Mr. Michael Kistler
Mr. Patrick Sullivan
Mr. Paul Jaeger
Mr. Phillip Chudoba
Mr. Robert Hogue
Mr. Ronald Davis
Mr. Samuel Worth
Mr. Scott Lutterloh
Mr. Scott O'Neil
Mr. Stephen Trautman
Mr. Steve Iselin
Mr. Thomas Hicks
Mr. Todd Balazs
Mr. Tom Dee
Mr. William Deligne
Ms. Allison Stiller
Ms. Anne Brennan
Ms. Carmela Keeney
Ms. Cindy Shaver
Ms. Diane Boyle
Ms. Gloria Valdez
Ms. Jennifer LaTorre
Ms. Joan Johnson
Ms. Leslie Taylor
Ms. Lynn Wright
Ms. Mary Tompa
Ms. Sharon Smoot
Ms. Wen Masters
RADM Elizabeth Train
RADM Jeffrey Harley
RADM Thomas Moore
RDML Jon Hill
RDML Lorin Selby
RDML William Galinis
VADM Terry Benedict

FOR FURTHER INFORMATION CONTACT:

Jacqueline Wourman, Performance Management Program Manager, Executive Management Program Office, Office of Civilian Human Resources at 202 685-6665.

Dated: November 24, 2015.

N.A. Hagerty-Ford,

*Commander, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2015-30494 Filed 11-30-15; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent To Grant a Partially/Co-Exclusive License; CogniTek Management Systems

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to CogniTek Management Systems located at 3175 Commercial Avenue, Suite 102, Northbrook, Illinois 60062, a revocable, nonassignable, partially exclusive license throughout the United States (U.S.) in the fields of use for Spray Cleaning and Disinfecting for food, flavors, paints, inks, and desiccants; Fuel Atomization for Combustion, Power Generation and Fuel Production; Water Atomization and Water Evaporation for Heating, Cooling, Humidification and Dehumidification in Heating, Ventilation, and Air Conditioning and Greenhouse applications, as well as Freeze Drying; and a co-exclusive license throughout the U.S. in the fields of use for Water Desalination and Cleaning Systems for Health Products in the Government-Owned inventions described in U.S. Patent number 5,520,331 issued on May 28, 1996 entitled "Liquid Atomizing Nozzle" and U.S. Patent number 7,523,876 B2 issued on April 28, 2009 entitled "Adjustable Liquid Atomization Nozzle".

ADDRESSES: Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Michelle Miedzinski, Code 5.0H, 22347 Cedar Point Road, Building 2185, Room 2160, Patuxent River, Maryland 20670.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, within fifteen (15) days of the date of this published notice.

FOR FURTHER INFORMATION CONTACT: Michelle Miedzinski, 301-342-1133, Naval Air Warfare Center Aircraft Division, 22347 Cedar Point Road, Building 2185, Room 2160, Patuxent River, Maryland 20670.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 24, 2015.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015-30495 Filed 11-30-15; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Navy Atlantic Fleet Training and Testing; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** (80 FR 218) on November 12, 2015, announcing a Notice of Intent to prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Navy Atlantic Fleet Training and Testing. The document contained an incorrect date and phone number.

FOR FURTHER INFORMATION CONTACT:

Lesley Dobbins-Noble, Naval Facilities Engineering Command, Code EV22LDN (AFTT EIS/OEIS Project Manager), 6506 Hampton Boulevard, Norfolk, Virginia 23508-1278. 757-322-4625.

Correction: In the **Federal Register** (80 FR 218) of November 12, 2015, on page 69951, in the third column, correct the mailed comments postmarked date and telephone number to read:

1. January 12, 2016; and
2. 757-322-4625.

Dated: November 24, 2015.

N.A. Hagerty-Ford,

*Commander, Judge Advocate General's Corps,
U.S. Navy, Administrative Law Division,
Federal Register Liaison Officer.*

[FR Doc. 2015-30498 Filed 11-30-15; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2015-ICCD-0112]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Data Challenges and Appeals Solution (DCAS)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 31, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2015-ICCD-0112. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202-377-4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note

that written comments received in response to this notice will be considered public records.

Title of Collection: Data Challenges and Appeals Solution (DCAS).

OMB Control Number: 1845–0137.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 1,029,889.

Total Estimated Number of Annual Burden Hours: 175,081.

Abstract: This is a request for an extension of the emergency clearance that was granted on this collection for the Data Challenges and Appeals Solution (DCAS), a new system that will allow institutions to challenge their self-reported data as well as Department calculated metrics. The system will ultimately provide for the receipt, processing, data storage and archiving of data challenges received from institutions for challenges of Gainful Employment (GE) metrics, Cohort Default Rates (institutional and programmatic), and Disclosure Rates and Metrics. This request is for the first phase of DCAS, the institutional challenge to the GE completers list provided to institutions by the Department of Education. The other aspects of DCAS will be made functional and available to institutions in stages, to allow for full development and testing, through subsequent system releases.

Dated: November 25, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–30405 Filed 11–30–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0090]

Agency Information Collection Activities; Comment Request; EDFacts Data Collection School Years 2016–17, 2017–18, and 2018–19

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revised information collection.

DATES: Interested persons are invited to submit comments on or before December 31, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED–2015–ICCD–0090 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at (202) 502–7411 or by email kashka.kubzdela@ed.gov.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in

response to this notice will be considered public records.

Title of Collection: EDFacts Data Collection School Years 2016–17, 2017–18, and 2018–19.

OMB Control Number: 1850–NEW.

Type of Review: A revised information collection.

Respondents/Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 61.

Total Estimated Number of Annual Burden Hours: 126,880.

Abstract: EDFacts is a U.S. Department of Education (ED) initiative to collect, analyze, report on and promote the use of high-quality, pre-kindergarten through grade 12 (pre-K–12) performance data for use in education planning, policymaking, and management and budget decision making to improve outcomes for students. EDFacts enables the National Center for Education Statistics (NCES) to report on students, schools, staff, services, and education outcomes at the state, district, and school levels, by centralizing data provided by state education agencies, local education agencies, and schools. This centralized approach provides ED users with the ability to efficiently analyze and report on submitted data and has reduced the reporting burden for state and local data producers through the use of streamlined data collection, analysis, and reporting tools. EDFacts collects information on behalf of ED grant and program offices for approximately 180 data groups for all 50 states, Washington DC, Puerto Rico, and seven outlying areas and freely associated states (American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Commonwealth of the Northern Mariana Islands, Republic of Palau, and the U.S. Virgin Islands), the Department of Defense Education Activity (DoDEA), and the Bureau of Indian Education (BIE). NCES seeks authorization from OMB to continue its EDFacts data collection and is requesting a new clearance for the 2016–17, 2017–18, and 2018–19 school years in order to continue to provide EDFacts data to Department of Education program offices, as well as SEAs, LEAs, and schools. In response to the 60-day public comment period announced in the **Federal Register** on July 9, 2015, ED received 52 comments from 49 commenters. A summary of the comments and ED's responses are provided in Attachment F. This notice announces that the revised collection package is now available for a 30-day public comment period. This submission includes a few proposed

changes to the EDFacts data collection. In addition to reviewing the proposed changes (detailed in Attachment C and the B Attachments), ED requests that SEAs and other stakeholders respond to the directed questions found in Attachment D.

Dated: November 25, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015-30417 Filed 11-30-15; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of solicitation for comments.

SUMMARY: The President's Council of Advisors on Science and Technology (PCAST) is interested in hearing from stakeholders on a series of questions related to forensic science.

DATES: Please submit all responses by December 23, 2015, 12:00 p.m. EST.

ADDRESSES: input must be submitted electronically using the Web-based form available at <https://www.whitehouse.gov/webform/pcast-forensic-science-solicitation-questions-0>.

FOR FURTHER INFORMATION CONTACT:

Specific questions about this notice should be sent via email to Ms. Jennifer Michael at Jennifer_L_Michael@ostp.eop.gov.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the Nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, Cabinet Departments, and other Federal agencies. See the Executive Order at <http://www.whitehouse.gov/ostp/pcast>. PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr.

Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Issued in Washington, DC, on November 24, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015-30453 Filed 11-30-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

National Offshore Wind Strategy Workshop

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of public meeting.

SUMMARY: The Department of Energy (DOE) Wind and Water Power Technologies Office (WWPTO) and the Department of the Interior (DOI) Bureau of Ocean Energy Management Office (BOEM) are convening a workshop to obtain individual stakeholder insight into the technical and market challenges and potential pathways to facilitate the development of the offshore wind industry in the United States. The workshop seeks individual input across the range of U.S. offshore wind stakeholders to better inform efforts to update and refine the 2011 *A National Offshore Wind Strategy*.

DATES: DOE and DOI will hold a workshop on Thursday, December 10th, 2015, from 8:00 a.m. to 5:30 p.m. in Washington, DC. RSVP is required by December 7th, 2015.

ADDRESSES: The workshop will be held at the Hotel Palomar DC located at 2121 P St NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Questions may be directed to Greg Matzat, Department of Energy at (202) 586-2776 or Greg.Matzat@ee.doe.gov, or Jim Bennett, Department of the Interior at (703) 787-1300 or James.Bennett@boem.gov.

SUPPLEMENTARY INFORMATION: Since the release of the 2011 *A National Offshore Wind Strategy: Creating an Offshore Wind Energy Industry in the United States*, DOE has invested in 55 projects and demonstrations and DOI has held

five offshore wind lease sales. A 2016 update to *A National Offshore Wind Strategy* is currently underway at the agencies, which aims to better understand how the industry has changed in the past five years, identify the key challenges still facing the U.S. industry, explore potential pathways for offshore wind in the U.S., and identify the activities needed to facilitate offshore wind development.

The focus of the workshop will be for agencies to receive public input, questions, and recommendations for areas of potential improvement in the refinement and updating of the 2011 *A National Offshore Wind Strategy*. Particular areas of interest will include technical and market challenges facing offshore wind and potential pathways forward. Participants should limit information and comments to those based on personal experience, individual advice, information, or facts regarding these topics.

It is not the object of this session to obtain any group position or consensus relating to the strategic actions or inactions of the industry as a whole or those of DOE or DOI; rather, the agencies are seeking as much insight as possible from all the individuals at this meeting. To most effectively use the limited time please refrain from passing judgment on another participant's recommendations or advice and, instead, concentrate on your individual experiences.

Public Participation: This meeting is open to the public, subject to space availability. Stakeholders from all sectors in U.S. offshore wind energy are encouraged to attend. Pre-registration is required as space is limited.

Pre-Registration: To pre-register, please include/enter your registration information at the following URL online: <http://goo.gl/forms/1zm7Np2wCt>. If you have any questions about registration, please contact Ronee Penoi via email at rpenoi@cbuilding.org or by telephone at (202) 853-9005.

Participants interested in attending should pre-register no later than the close of business on December 7th, 2015. All attendees are required to pre-register. Space will be limited, and DOE and DOI will continue to accept RSVPs until they have reached maximum attendance based on space limitations.

Privacy Notice: DOE and DOI are requesting your name, company/organization, work email address and work telephone number in order to register you for this government-led event and to facilitate feedback, provide updates, and potentially to plan for future workshops. Providing this information is voluntary, but is

necessary in order to attend the workshop. Please be advised that we may include your name and associated company/organization only in a meeting summary that we will make available to the general public after the workshop, and by providing this information you are consenting to allowing us to make it publicly available. DOI's contractor will collect and manage the information until the workshop is over. The contractors and the government will only use your information for the limited purposes stated above, will only share it with authorized personnel, and will not share it with third parties for promotional purposes.

Information on Services for Individuals with Disabilities: Individuals requiring special accommodations at the meeting, please contact Ronee Penoi no later than the close of business on December 3th, 2015.

Minutes: A summary report of the meeting will be available for printing at the DOE Wind Program Online Publication and Product Library at: wind.energy.gov/publications.html.

Dated: November 25, 2015.

Jose Zayas,

Director, Wind and Water Power Technologies, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2015-30452 Filed 11-30-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16-203-000.

Applicants: Kern River Gas

Transmission Company.

Description: § 4(d) Rate Filing; 2015

Molycorp to be effective 9/21/2015.

Filed Date: 11/18/15.

Accession Number: 20151118-5088.

Comments Due: 5 p.m. ET 11/30/15.

Docket Numbers: RP16-204-000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing;

November 21—30 2015 Auction to be effective 11/21/2015.

Filed Date: 11/18/15.

Accession Number: 20151118-5101.

Comments Due: 5 p.m. ET 11/30/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16-144-000.

Applicants: TransColorado Gas

Transmission Company L.

Description: Filing Withdrawal:

Motion to Withdraw Filing.

Filed Date: 11/18/15.

Accession Number: 20151118-5075.

Comments Due: 5 p.m. ET 11/30/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 19, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30397 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16-18-000]

Magnum Gas Storage, LLC; Notice of Application for Amendment

Take notice that on November 16, 2015, Magnum Gas Storage, LLC (Magnum), 3165 E. Millrock Dr., #330, Holladay, Utah 84121, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's Regulations requesting that the Commission approve an amendment (Amendment) to the certificate of public convenience and necessity issued to the Magnum in Docket No. CP10-22-000 on March 17, 2011 (March 17 Order). The March 17 Order authorized Magnum to construct facilities in Millard, Juab, and Utah Counties, Utah consisting of four salt caverns, various related

aboveground supporting facilities and a 61.6-mile long, 36-inch diameter, header pipeline extending from the storage site to points of interconnection with existing interstate gas transmission facilities owned by Kern River Gas Transmission Company and Questar Pipeline Company near Goshen, Utah.

The Amendment requested by Magnum would authorize the relocation of Magnum's approved natural gas storage caverns and associated surface facilities within the previously analyzed Project area, grant authority to Magnum to provide a new firm wheeling transportation service under market-based rates, and extend the time by which the facilities must be constructed and placed in service. The filing may be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this application should be directed to Tiffany A. James, Vice President, Project Development and Government Affairs, Magnum Gas Storage, LLC, 3165 E. Millrock Dr., #330, Holladay, Utah 84121, telephone: (801) 993-7001, email: tjames@westernenergyhub.com, or J. Gordon Pennington, Attorney at Law, Georgetown Place, 1101 30th Street NW., Suite 500, Washington, DC 20007, phone: (202) 625-4330, email: Pennington5@verizon.net.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically

via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 15, 2015

Dated: November 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30399 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14686-000]

Energy Resources USA Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On June 25, 2015, Energy Resources USA Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) David D. Terry Lock and Dam on the Arkansas River near the town of Little Rock in Pulaski County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 100-foot-long overflow bank extension connecting to the existing dam; (2) a 770-foot-long, 200-foot-wide intake channel with a 85-foot-long retaining wall; (3) a 220-foot-long, 90-foot-wide powerhouse containing four generating units with a total capacity of 18 megawatts; (4) a 500-foot-long, 200-foot-wide tailrace with a 85-foot-long retaining wall; (5) a 4.16/69 kilo-Volt (kV) substation; and (6) a 4-mile-long, 69 kV transmission line. The proposed project would have an estimated average annual generation of 128,200 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134; Phone: +34 93 252 38 40; Email: agonzalez@energyresources.es

FERC Contact: Christiane Casey, christiane.casey@ferc.gov, (202) 502-8577.

Competing Application: This application competes with Project No. 14664-000 filed March 3, 2015. Competing applications had to be filed on or before July 20, 2015.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <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 or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14686) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30402 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14518-001]

New England Hydropower Company, LLC; Notice of Surrender of Preliminary Permit

Take notice that New England Hydropower Company, LLC, permittee for the proposed Lensdale Pond Dam Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on July 25, 2013, and would have expired on June 30,

2016.¹ The project would have been located on the Quinebaug River in the town of Southbridge, Worcester County, Massachusetts.

The preliminary permit for Project No. 14518 will remain in effect until the close of business, December 18, 2015. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.² New applications for this site may not be submitted until after the permit surrender is effective.

Dated: November 18, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30394 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14689-000]

Energy Resources USA Inc., Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On June 26, 2015, Arkansas Electric Cooperative Corporation, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) Col. Charles D. Maynard Lock and Dam on the Arkansas River near the town of Pine Bluff in Jefferson County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 100-foot-long overflow bank extension connecting to the existing dam; (2) a 770-foot-long, 300-foot-wide intake channel with a 85-foot-long retaining wall; (3) a 220-foot-long, 90-foot-wide powerhouse containing four generating units with a total capacity of 18 megawatts; (4) a 1000-foot-long, 220-foot-wide tailrace with a 85-foot-long retaining wall; (5) a 4.16/69 kilo-Volt (kV) substation; and (6) a 3-mile-long, 69 kV transmission line. The proposed project would have

an estimated average annual generation of 123,700 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134; Phone: +34 93 252 38 40; Email: agonzalez@energyresources.es

FERC Contact: Christiane Casey, christiane.casey@ferc.gov, (202) 502-8577.

Competing Application: This application competes with Project No. 14665-000 filed March 3, 2015. Competing applications had to be filed on or before July 20, 2015.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <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 or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14689) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 24, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30403 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14672-000]

Lock Hydro Friends Fund III; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 30, 2015, Lock Hydro Friends Fund III, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) Selden Lock and Dam on the Black Warrior River near the town of Sawyerville in Green and Hale Counties, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 150-foot-long, 25-foot-wide lock frame module containing ten generating units with a total capacity of 15 megawatts; (2) a 150-foot-long; 65-foot-wide tailrace; (3) a 50-foot-long, 25-foot-wide switchyard; and (4) a 2.3-mile-long, 34.5kV transmission line. The proposed project would have an estimated average annual generation of 78,840 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Green Energy, LLC, P.O. Box 43796, Birmingham, AL 35243; Phone: (877) 556-6566; Email: wayne@hgenergy.com.

FERC Contact: Christiane Casey, christiane.casey@ferc.gov, (202) 502-8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the

¹ 144 FERC ¶ 62,066 (2013).

² 18 CFR 385.2007(a)(2) (2015).

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 or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-14672-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14672) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 24, 2015.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2015-30404 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16-323-000]

Ohio Valley Electric Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Ohio Valley Electric Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard

to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 8, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 18, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30390 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16-343-000]

RE Astoria 2 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding RE Astoria 2 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 8, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 18, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30393 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****[Docket No. PF15–31–000]****Columbia Gas Transmission, LLC;
Notice of Intent To Prepare an
Environmental Impact Statement for
the Planned Mountaineer XPress
Project, Request for Comments on
Environmental Issues and Notice of
Public Scoping Meeting**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Mountaineer XPress Project (MXP) involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) in 14 counties in the western portion of West Virginia. The Commission will use this EIS in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in

Washington, DC on or before December 17, 2015.

If you sent comments on this project to the Commission before the opening of this docket on September 16, 2015, you will need to file those comments in Docket No. PF15–31–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (www.ferc.gov). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are four methods you can use to submit your

comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or efiling@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (www.ferc.gov) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (www.ferc.gov) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF15–31–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public scoping meetings its staff will conduct in the project area, scheduled as follows.

SCHEDULE AND LOCATIONS FOR THE MOUNTAINEER XPRESS PROJECT PUBLIC SCOPING MEETINGS

Date and time	Location
Monday, December 7, 2015, 6:00 p.m.	The Lewis Wetzel Family Center, 442 E. Benjamin Drive, New Martinsville, WV 26149.
Tuesday, December 8, 2015, 6:00 p.m.	Doddridge County Park—Main Lodge, 1252 Snowbird Road, West Union, WV 26456.
Wednesday, December 9, 2015, 6:00 p.m.	Cedar Lake Conference Center—Assembly Hall, 82 FFA Drive, Ripley, WV 25271.
Thursday, December 10, 2015, 6:00 p.m.	LaBelle Theater, 311 D Street, South Charleston, WV 25303.

The doors will open at 5 p.m. at which time we will begin our sign up of speakers for the meetings. For the hour prior to the start of the meetings, Columbia representatives will be present with maps depicting the project and to answer questions.

The scoping meetings will begin at 6 p.m. with a description of our

environmental review process by Commission staff, after which speakers will be called. The meetings will end once all speakers have provided their comments or at 10 p.m., whichever comes first. Please note that depending on the number of people signed up to speak, there may be a time limit of 3 minutes to present comments, and

speakers should structure their comments accordingly. If time limits are implemented, they will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. The meetings will be recorded by a court reporter to ensure comments are accurately recorded. Transcripts will be entered

into the formal record of the Commission proceeding.

Please note this is not your only public input opportunity; refer to the review process flow chart in appendix 1.¹

Summary of the Planned Project

Columbia plans to construct and operate approximately 167 miles of 36-inch and 24-inch-diameter pipeline; construct three new compressor stations and three regulator stations; and modify three existing compressor stations and other existing appurtenant facilities in West Virginia. The MXP would provide about 2.7 billion standard cubic feet per day of natural gas transportation capacity from production areas to markets on the Columbia system. According to Columbia, its project would enable infrastructure-constrained natural gas supplies to reach waiting markets served by Columbia's system. Columbia has entered into firm contracts for over 88 percent of the MXP capacity.

The MXP would consist of the following facilities:

- Construction of 161.1 miles of new 36-inch-diameter pipeline and associated equipment (main-line valves, pigging facilities,² etc.), located in Marshall, Wetzel, Tyler, Doddridge, Ritchie, Calhoun, Wirt, Roane, Jackson, Mason, Putnam, and Cabell Counties, West Virginia;
- construction of 6.3 miles of 24-inch-diameter pipeline in Doddridge County (the Sherwood Lateral);
- construction of three new compressor stations and related equipment in Doddridge County (Sherwood Compressor Station), Ritchie County (White Oak Compressor Station), and Jackson County (Mt. Olive Compressor Station);
- construction of three new regulator stations and associated equipment in Marshall County (the Leach Interconnect), Doddridge County (Sherwood Lateral Regulator), and Cabell County (the Saunders Creek Tie-in);
- replacement of two sections of existing 30-inch-diameter pipeline,

1,295 feet and 814 feet in length, in Cabell County;

- installation of additional compression at the anticipated Lone Oak Compressor Station (Marshall County), Elk River Compressor Station (Wayne County), and Ceredo Compressor Station (Kanawha County)—all of which are under review in other Commission dockets; and
- construction and/or installation of other related equipment.

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Columbia has proposed to use a 125-foot-wide right-of-way for construction of the new pipeline in upland areas, consisting of a 50-foot-wide permanent and a 75-foot-wide temporary right-of-way, except where site conditions require specific workspace configurations. Temporary right-of-way used during construction would be restored and revert to former uses once construction is completed. However, the permanent right-of-way would be maintained for permanent operation of the MXP.

Additional temporary workspace would be required at road, utility lines, and waterbody crossings; steep slopes; side slopes; horizontal directional drill locations; and at the beginning and end of construction spreads for mobilizing construction equipment. Disturbance would also result from the use of staging areas and construction of new and/or upgrading of existing access roads associated with construction and operation of the planned facilities.

The pipeline would be sited to follow existing pipeline, utility, and road rights-of-way to the maximum extent practicable.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us³ to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all

filed comments during the preparation of the EIS.

In the EIS, we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- socioeconomics;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EIS.⁴ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the West Virginia Department of Environmental Protection has expressed its intention to participate as a cooperating agency in the preparation of

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the "Additional Information" section of this notice.

² A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning, conducting internal inspections, or other purposes.

³ "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

⁴ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

the EIS to provide special expertise on environmental issues related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁵ We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Columbia. This preliminary list of issues may change based on your comments and our analysis.

- Removal of forested areas;
- impacts on endangered and threatened species that not covered under Columbia's Multi-Species Habitat Conservation Plan;
- changes to existing land uses; and
- safety of landowners during the operation of the proposed pipeline.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are

potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

Once Columbia files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at <http://www.ferc.gov/resources/guides/how-to/intervene.asp>. Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC Web site (www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF15-31-000). Be sure you have selected an appropriate date range. 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 issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which 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. Go to www.ferc.gov/docs-filing/esubscription.asp.

Finally, public meetings or site visits will be posted on the Commission's calendar located at www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

Dated: November 18, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30395 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16-38-000.

Applicants: The Potomac Edison Company.

Description: Application of The Potomac Edison Company for Authorization pursuant to Section 203 of the Federal Power Act, and Requests for Waivers of Certain Filing Requirements, Shortened Notice Period, and Expedited Consideration.

Filed Date: 11/20/15.

Accession Number: 20151120-5315.

Comments Due: 5 p.m. ET 12/11/15.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16-23-000.

Applicants: Golden Hills Interconnection, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Golden Hills Interconnection, LLC.

Filed Date: 11/20/15.

Accession Number: 20151120-5233.

Comments Due: 5 p.m. ET 12/11/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16-367-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Service Agreement Nos. 4290, 4291; Queue Nos. Y3-044/Y3-050/Y3-053, Y3-048 to be effective 10/21/2015.

⁵ The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Filed Date: 11/20/15.
Accession Number: 20151120–5196.
Comments Due: 5 p.m. ET 12/11/15.
Docket Numbers: ER16–368–000.
Applicants: Shelby County Energy Center, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff to be effective 12/31/9998.
Filed Date: 11/20/15.
Accession Number: 20151120–5208.
Comments Due: 5 p.m. ET 12/11/15.
Docket Numbers: ER16–369–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Letter Agreement Desert Stateline Project to be effective 11/20/2015.
Filed Date: 11/20/15.
Accession Number: 20151120–5216.
Comments Due: 5 p.m. ET 12/11/15.
Docket Numbers: ER16–370–000.
Applicants: Nevada Power Company.
Description: Initial rate filing: Service Agreement No. 15–00055 NPC and NPC Dry Lake to be effective 11/21/2015.
Filed Date: 11/20/15.
Accession Number: 20151120–5235.
Comments Due: 5 p.m. ET 12/11/15.
Docket Numbers: ER16–371–000.
Applicants: BioUrja Power, LLC.
Description: Baseline eTariff Filing: BioUrja Power, LLC Market-Based Rate Application to be effective 11/23/2015.
Filed Date: 11/20/15.
Accession Number: 20151120–5240.
Comments Due: 5 p.m. ET 12/11/15.
Docket Numbers: ER16–372–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Revisions to OATT Att K-Appx and OA Sched 1 re Hourly Offers, EL15–73–000 to be effective 12/31/9998.
Filed Date: 11/20/15.
Accession Number: 20151120–5242.
Comments Due: 5 p.m. ET 12/11/15.
Docket Numbers: ER16–373–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2015–11–20_3rd-4th Quarter Clean-Up Filing to be effective 11/21/2015.
Filed Date: 11/20/15.
Accession Number: 20151120–5243.
Comments Due: 5 p.m. ET 12/11/15.
Docket Numbers: ER16–374–000.
Applicants: Idaho Power Company.
Description: Tariff Cancellation: Notice of Cancellation of Jefferson Line Memorandum of Understanding with PAC to be effective 1/20/2016.
Filed Date: 11/23/15.
Accession Number: 20151123–5002.
Comments Due: 5 p.m. ET 12/14/15.
 Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–4–000.
Applicants: AEP Generating Company.
Description: Amendment to October 30, 2015 Application Under Section 204 of the Federal Power Act for Authorization of AEP Generating Company to Issue Securities.
Filed Date: 11/20/15
Accession Number: 20151120–5152.
Comments Due: 5 p.m. ET 12/11/15.
 The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.
 Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.
 eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30423 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1296–001.
Applicants: ResCom Energy LLC.
Description: Notice of Material Change in Status of ResCom Energy LLC.
Filed Date: 11/24/15.
Accession Number: 20151124–5127.
Comments Due: 5 p.m. ET 12/15/15.
Docket Numbers: ER12–1355–003.
Applicants: Iron Energy LLC.
Description: Notice of Material Change in Status of Iron Energy LLC.
Filed Date: 11/24/15.
Accession Number: 20151124–5120.
Comments Due: 5 p.m. ET 12/15/15.
Docket Numbers: ER14–209–002.
Applicants: PowerOne Corporation.
Description: Notice of Material Change in Status of PowerOne Corporation.

Filed Date: 11/24/15.
Accession Number: 20151124–5124.
Comments Due: 5 p.m. ET 12/15/15.
Docket Numbers: ER14–2751–002.
Applicants: Xcel Energy Southwest Transmission Company, LLC.
Description: Response to September 22, 2015 Deficiency Letter of Xcel Energy Southwest Transmission Company, LLC.
Filed Date: 11/23/15.
Accession Number: 20151123–5362.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: ER14–2752–002.
Applicants: Xcel Energy Transmission Development Company, LLC.
Description: Response to September 22, 2015 Deficiency Letter of Xcel Energy Transmission Development Company, LLC.
Filed Date: 11/23/15.
Accession Number: 20151123–5364.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: ER15–2631–003.
Applicants: Odell Wind Farm, LLC.
Description: Supplement to September 9, 2015 and October 19, 2015 Odell Wind Farm, LLC tariff filings.
Filed Date: 11/23/15.
Accession Number: 20151123–5225.
Comments Due: 5 p.m. ET 12/7/15.
Docket Numbers: ER16–368–001.
Applicants: Shelby County Energy Center, LLC.
Description: Tariff Amendment: Amendment to Market-Based Rate Tariff to be effective 12/31/9998.
Filed Date: 11/23/15.
Accession Number: 20151123–5297.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: ER16–383–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2015–11–24_SA 2871 NSP–North Star Solar GIA (J385) to be effective 11/25/2015.
Filed Date: 11/24/15.
Accession Number: 20151124–5151.
Comments Due: 5 p.m. ET 12/15/15.
Docket Numbers: ER16–384–000.
Applicants: Mulberry Farm, LLC.
Description: Compliance filing: Compliance Filing—Removal of Affiliate Waiver to be effective 11/1/2015.
Filed Date: 11/24/15.
Accession Number: 20151124–5165.
Comments Due: 5 p.m. ET 12/15/15.
Docket Numbers: ER16–385–000.
Applicants: ITC Interconnection LLC.
Description: Baseline eTariff Filing: Facilities Reimbursement Agreement to be effective 1/24/2016.
Filed Date: 11/24/15.
Accession Number: 20151124–5170.
Comments Due: 5 p.m. ET 12/15/15.

Docket Numbers: ER16–386–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 249—Round Valley Agreement to be effective 1/24/2016.

Filed Date: 11/24/15.

Accession Number: 20151124–5176.

Comments Due: 5 p.m. ET 12/15/15.

Docket Numbers: ER16–387–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2015–11–24 SA 2872 Montana Dakota-Montana Dakota GIA (J405) to be effective 11/25/2015.

Filed Date: 11/24/15.

Accession Number: 20151124–5220.

Comments Due: 5 p.m. ET 12/15/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–5–000.

Applicants: Baltimore Gas and Electric Company.

Description: Supplement to October 30, 2015 Application of Baltimore Gas and Electric Company Under Section 204 of the Federal Power Act for Authorization of the Issuance Securities.

Filed Date: 11/24/15.

Accession Number: 20151124–5224.

Comments Due: 5 p.m. ET 12/4/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 24, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015–30396 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–328–000]

Cogentrix Virginia Financing Holding Company, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Cogentrix Virginia Financing Holding Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 8, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 18, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015–30391 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–762–003; ER15–760–003.

Applicants: Sierra Solar Greenworks LLC, Western Antelope Blue Sky Ranch A LLC.

Description: Notice of Non-Material Change in Status of Sierra Solar Greenworks LLC, *et. al.*

Filed Date: 11/18/15.

Accession Number: 20151118–5102.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER15–1579–002.

Applicants: 67RK 8me LLC.

Description: Compliance filing: 67RK 8me LLC MBR Tariff to be effective 6/1/2015.

Filed Date: 11/18/15.

Accession Number: 20151118–5076.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER15–1582–003.

Applicants: 65HK 8me LLC.

Description: Compliance filing: 65HK 8me LLC MBR Tariff to be effective 6/1/2015.

Filed Date: 11/18/15.

Accession Number: 20151118–5077.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER15–1896–002.

Applicants: Eden Solar LLC.

Description: Compliance filing: Eden Solar LLC MBR Tariff to be effective 8/1/2015.

Filed Date: 11/18/15.

Accession Number: 20151118–5078.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER15–2613–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: PJM Response to Deficiency Letter dated 11/2/15 in Docket No. ER15–2613–000 to be effective 9/30/2015.

Filed Date: 11/17/15.

Accession Number: 20151117–5146.

Comments Due: 5 p.m. ET 12/8/15.

Docket Numbers: ER15–2616–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2015–11–17 MISO–PJM JOA M2M FFE Deficiency Response to be effective 9/30/2015.

Filed Date: 11/17/15.

Accession Number: 20151117–5152.

Comments Due: 5 p.m. ET 12/8/15.

Docket Numbers: ER16–289–001.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Errata to COTP CIRS Appendix F Filing to be effective 1/6/2016.

Filed Date: 11/18/15.

Accession Number: 20151118–5004.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER16–343–000.

Applicants: RE Astoria 2 LLC.

Description: Baseline eTariff Filing: Application for MBR to be effective 1/19/2016.

Filed Date: 11/18/15.

Accession Number: 20151118–5055.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER16–344–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2015–11–18 Attachment J Revisions to be effective 1/17/2016.

Filed Date: 11/18/15.

Accession Number: 20151118–5085.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER16–345–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2050 OMPA PTP Notice of Cancellation to be effective 9/1/2015.

Filed Date: 11/18/15.

Accession Number: 20151118–5118.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER16–346–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Market participant resubmission of risk management policies to be effective 1/17/2016.

Filed Date: 11/18/15.

Accession Number: 20151118–5120.

Comments Due: 5 p.m. ET 12/9/15.

Docket Numbers: ER16–347–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2015–11–18 PSCo–TSGT–Ft Lupton E&P–420–0.0.0–Filing to be effective 11/19/2015.

Filed Date: 11/18/15.

Accession Number: 20151118–5139.

Comments Due: 5 p.m. ET 12/9/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 18, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30388 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–355–000]

Colonial Eagle Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Colonial Eagle Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 14, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30428 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–115–001; CP15–115–000]

National Fuel Gas Supply Corporation Empire Pipeline, Inc.; Supplemental Notice of Intent to Prepare an Environmental Assessment for the Proposed Northern Access 2016 Project and Request for Comments on Environmental Issues

On October 22, 2014, the Federal Energy Regulatory Commission (FERC or Commission) issued in Docket No. PF14–18–000 a *Notice of Intent to Prepare an Environmental Assessment for the Planned Northern Access 2016 Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (October 22, 2014 NOI). In their application in Docket No. CP15–115–000, National Fuel Gas Supply Corporation (Supply) and Empire Pipeline, Inc. (Empire) (collectively referred to as National Fuel) filed proposed locations for one new compressor station and one natural

gas dehydration facility in Niagara County, New York. To solicit comments on the new proposed aboveground facilities, on April 29, 2015, the Commission issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Proposed Northern Access 2016 Project, Request for Comments on Environmental Issues, Notice of Environmental Site Review, and Notice of Public Scoping Meeting* (April 29, 2015 NOI). Based on public input received throughout the scoping process, National Fuel now proposes a new location for its new compressor station and has made other modifications to its proposed facilities in an amendment application in Docket No. CP15-115-001. This Supplemental Notice is being issued to seek comments on these changes, and opens a new 30-day scoping period for interested parties to file comments on environmental issues specific to these facilities.

The October 22, 2014 NOI announced that the FERC will prepare an environmental assessment (EA) to address the environmental impacts of the Northern Access 2016 Project (Project). Please refer to the NOI for more information about the facilities proposed by National Fuel in Pennsylvania and New York. The Commission will use the EA in its decision-making process to determine whether to authorize the Project.

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help Commission staff determine what issues they need to evaluate in the EA. To ensure your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before December 19, 2015.

The Commission previously solicited input on the pipeline portion of the project in Pennsylvania and New York in the fall of 2014. In addition, the Commission solicited input on the aboveground facilities in Niagara County in the spring of 2015. If you have previously submitted comments during the pre-filing review in docket no. PF14-18-000 or since the application filing in docket no. CP15-115-000, you do not need to resubmit your comments at this time. We¹ are

specifically seeking comments on the new proposed location of the Pendleton Compressor Station and additional modifications associated with National Fuel's amended application for the Project.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

National Fuel provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (www.ferc.gov).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502-8258 or efiling@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (www.ferc.gov) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (www.ferc.gov) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister*." If you are filing

a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP15-115-000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.²

Summary of the Newly Proposed Facilities

The facilities that are the focus of this notice are the new Pendleton Compressor Station (Killian Road Site) and an additional 2.07 miles of 16- and 14-inch diameter pipeline in the town of Pendleton, New York to connect the new Pendleton Compressor Station to the northward to the existing XM-10 pipeline and southward to the existing X-North Pipeline.

The tie-in between the southern end of Line XM-10 and National Fuel's X-North pipeline in Wheatfield, New York is no longer necessary due to the newly proposed Pendleton Compressor Station site. National Fuel previously proposed to abandon all 3.09 miles of the XM-10 Pipeline system in Wheatfield, New York and Pendleton, New York via sale to Empire. Based on the new location of the Pendleton Compressor Station, Empire would only acquire 1.08 miles of the XM-10 Pipeline system and associated facilities from National Fuel.

The general location of the project facilities is shown in appendix 2.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to

² The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

¹ "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources and wetlands;
- Vegetation and wildlife, including migratory birds;
- Fisheries and aquatic resources;
- Threatened, endangered, and other special-status species;
- Land use, recreation, special interest areas, and visual resources;
- Socioeconomics;
- Cultural resources;
- Air quality and noise;
- Reliability and safety; and
- Cumulative environmental impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Please note that since the amended application has been filed, an additional docket number has been assigned (CP15–115–001) for the amended Project facilities. As part of our pre-filing review, we participated in public Open House meetings sponsored by National Fuel in the project area in August 2014 to explain the environmental review process to interested stakeholders. We also conducted public scoping meetings of along the proposed pipeline route in November 2014 and in Pendleton, New York in May 2015. We have also contacted federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. We will publish and distribute the EA for public comment. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2 of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.³ Agencies that would like to request cooperating

agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Army Corps of Engineers and New York Department of Agriculture and Markets have expressed their intention to participate as cooperating agencies in the preparation of the EA to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities

interested in and/or potentially affected by the proposed project.

Copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Motions to intervene are more fully described at <http://www.ferc.gov/resources/guides/how-to/intervene.asp>.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site at www.ferc.gov using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP15–115). Be sure you have selected an appropriate date range. 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 issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which 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. Go to www.ferc.gov/docs-filing/esubscription.asp.

Finally, public meetings or site visits will be posted on the Commission's calendar located at www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

³ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

⁴ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Dated: November 19, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30472 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–16–000; Docket No. QF06–17–004]

PáTu Wind Farm, LLC v. Portland General Electric Company, PáTu Wind Farm, LLC; Notice of Complaint

Take notice that on November 18, 2015, pursuant to sections 206 and 306 of the Federal Power Act (FPA),¹ section 210(h)(1) of the Public Utility Regulatory Policies Act (PURPA),² and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,³ PáTu Wind Farm, LLC (PáTu or Complainant) filed a formal complaint against Portland General Electric Company (Respondent) alleging that Respondent violated the Commission's orders⁴ by refusing to permit Complainant to establish a dynamic scheduling arrangement for delivery of power from the PáTu wind farm to Respondent's Balancing Authority Area, all as more fully explained in the complaint.

The Complainant certifies that a copy of the complaint has been served on the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

“eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 8, 2015.

Dated: November 18, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30389 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–371–000]

BioUrja Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding BioUrja Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 14, 2015.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30430 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–148–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Schedule for Environmental Review of the Susquehanna West Project

On April 2, 2015, Tennessee Gas Pipeline Company, L.L.C. (TGP) filed an application in Docket No. CP15–148–000 requesting authorization pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Susquehanna West Project (Project), and would deliver an additional 145,000 dekatherms per day of natural gas. According to TGP, its project would meet market needs in the northeast U.S., which have been capacity constrained.

On April 13, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application

¹ 16 U.S.C. 824e & 825e.

² 16 U.S.C. 824a–3(h)(1).

³ 18 CFR 385.206 (2014).

⁴ *PáTu Wind Farm, LLC v. Portland General Electric Co.*, 150 FERC ¶ 61,032, reh'g denied, 151 FERC ¶ 61,223 (2015), *petitions for review pending sub nom.*, *Portland General Electric Co. v. FERC*, D.C. Cir. Nos. 15–1237 *et al.*

for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA, February 23, 2016
90-day Federal Authorization Decision
Deadline, May 23, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

TGP is proposing to construct 8.1 miles of new 36-inch-diameter looping¹ pipeline in two segments in Tioga County, Pennsylvania; relocation of an existing 16,000 horsepower compressor unit from Compressor Station 319 to Compressor Station 317, both located in Bradford County, Pennsylvania, resulting in an increase of 16,000 horsepower at Compressor Station 317; replacement of an existing compressor unit at Compressor Station 319 with a new 20,500 horsepower compressor unit, resulting in an increase of 4,500 horsepower at Compressor Station 319; and certain piping and equipment modifications associated with the pipeline loops at Compressor Stations 315, 317, and 319.

Background

On June 10, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Susquehanna West Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the Pennsylvania Department of Environmental Protection; Pennsylvania Department of Conservation and Natural Resources; Pennsylvania Department of Transportation; Stockbridge-Munsee Tribal Historic Preservation Office; and the Allegheny Defense Project. The

primary environmental issues raised during scoping relate to impacts on wetlands and waterbodies, fish, wildlife, cultural resources, air quality, and impacts associated with road crossings.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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. Go to www.ferc.gov/docs-filing/esubscription.asp.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC Web site (www.ferc.gov). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (i.e., CP15-148), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: November 24, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30398 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13-94-006.

Applicants: Avista Corporation.

Description: Compliance filing; Avista Corp OATT Order 1000 Compliance Filing to be effective 11/24/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5202.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER13-99-007.

Applicants: Puget Sound Energy, Inc.

Description: Compliance filing; OATT Order No. 1000 Compliance Filing to be effective 11/24/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5287.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER13-836-006.

Applicants: MATL LLP.

Description: Compliance filing; Compliance Filing Schedule K to be effective 11/24/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5290.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER15-422-002.

Applicants: Avista Corporation.

Description: Compliance filing; Avista Corp Order 1000 FERC Rate Schedule No. CG2 Compliance Filing to be effective 11/24/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5201.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER15-429-003.

Applicants: Puget Sound Energy, Inc.

Description: Compliance filing; Columbia Grid Functional Agreement Second Amendment to be effective 11/24/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5288.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER15-2533-001.

Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing; 2015-11-23 SA 2831 ITC-Geronimo GIA Compliance (J340) to be effective 10/25/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5203.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-381-000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing; Executed Services Agreement with FirstEnergy Service Company to be effective 10/23/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5226.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-382-000.

Applicants: Dominion Retail, Inc.

Description: Tariff Cancellation: Cancellation of Tariff and Tariff I.D. to be effective 11/24/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5284.

Comments Due: 5 p.m. ET 12/14/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern

¹ A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30425 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14673-000]

Lock Hydro Friends Fund III; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 30, 2015, Lock Hydro Friends Fund III, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) Coffeerville Lock and Dam on the Tombigbee River near the town of Coffeerville in Clark and Choctaw Counties, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 150-foot-long, 25-foot-wide lock frame module containing twelve generating units with a total capacity of 27 megawatts; (2) a 150-foot-long; 65-foot-wide tailrace; (3) a 50-foot-long, 25-foot-wide switchyard; and (4) a 1-mile-long, 34.5kV transmission line. The proposed project would have an estimated average annual generation of 153,738 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Green Energy, LLC, P.O. Box 43796, Birmingham, AL 35243; Phone: (877) 556-6566; Email: wayne@hgenenergy.com.

FERC Contact: Christiane Casey, christiane.casey@ferc.gov, (202) 502-8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <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 or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-14673-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14673) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30401 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15-527-003.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing; Compliance Filing per 9/24/15 Order in

Docket No. ER15-527 to be effective 5/15/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5190.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-95-001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Tariff Amendment: 2015-11-23_SA 2834 Amended ATC-NSPW Design and Construction Agreement to be effective 12/15/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5151.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-128-001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Tariff Amendment: 2015-11-23_SA 2855 Amended ATC-Manitowoc Relocation Agreement to be effective 12/20/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5160.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-375-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3740, Queue No. X1-110 to be effective 11/23/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5113.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-376-000.

Applicants: West Chicago Battery Storage LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 1/23/2016.

Filed Date: 11/23/15.

Accession Number: 20151123-5116.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-377-000.

Applicants: Joliet Battery Storage LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 1/23/2016.

Filed Date: 11/23/15.

Accession Number: 20151123-5119.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-378-000.

Applicants: NorthWestern Corporation.

Description: Compliance filing: Revised Market-Based Rate Tariff to be effective 10/1/2015.

Filed Date: 11/23/15.

Accession Number: 20151123-5148.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16-379-000.

Applicants: Battery Utility of Ohio, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 1/23/2016.

Filed Date: 11/23/15.

Accession Number: 20151123–5180.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: ER16–380–000.

Applicants: NorthWestern

Corporation.

Description: § 205(d) Rate Filing: SA 290 Sixth Rev—NITSA with Oldcastle Materials Cement Holdings to be effective 1/1/2016.

Filed Date: 11/23/15.

Accession Number: 20151123–5197.

Comments Due: 5 p.m. ET 12/14/15.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD16–2–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard PRC–005–6.

Filed Date: 11/13/15.

Accession Number: 20151113–5283.

Comments Due: 5 p.m. ET 12/8/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 23, 2015

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30424 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–368–000]

Shelby County Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Shelby

County Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 14, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30429 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–4–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice Of Intent To Prepare An Environmental Assessment For The Proposed Orion Project And Request For Comments On Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Orion Project involving construction and operation of facilities by Tennessee Gas Pipeline Company, L.L.C. (TGP) in Wayne and Pike Counties, Pennsylvania. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before December 23, 2015.

If you sent comments on this project to the Commission before the opening of this docket on October 9, 2015, you will need to file those comments in Docket No. CP16–4–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement

negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

TGP provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. It is also available for viewing on the FERC Web site (www.ferc.gov).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or efiling@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission’s Web site (www.ferc.gov) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission’s Web site (www.ferc.gov) under the link to *Documents and Filings*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on “*eRegister*.” If you are filing a comment on a particular project, please select “Comment on a Filing” as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project Docket No. (CP16–4–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

TGP proposes to construct and operate pipeline facilities, to modify existing aboveground facilities, and add new tie-in facilities in Wayne and Pike Counties, Pennsylvania. The Orion Project would provide about 135,000 dekatherms per day of natural gas. According to TGP, its project would meet market needs of the Middle Atlantic and New England regions of the

United States, and to a lesser extent Canada.

The Orion Project would consist of the following facilities:

- approximately 12.9 miles of new 36-inch-diameter looping¹ pipeline in Wayne and Pike Counties, Pennsylvania;
- a new internal pipeline inspection (“pig”) launcher, crossover, and connecting facilities at the beginning of the proposed pipeline loop in Wayne County, Pennsylvania;
- a new “pig” receiver, crossover, and connecting facilities at the end of the proposed pipeline loop in Pike County, Pennsylvania;
- modifications at the existing Compressor Station 323, including rewheeling/restaging of an existing compressor and other piping and appurtenant modifications.

The general location of the project facilities is shown in appendix 1.²

Land Requirements for Construction

Construction of the proposed facilities would disturb about 248 acres of land for the pipeline and aboveground facilities, 62 acres of which are associated with existing permanent TGP rights-of-way. Following construction, TGP would maintain about 79 acres for permanent operation of the project’s facilities, 34 acres of which are associated with existing permanent TGP rights-of-way; the remaining acreage would be restored and revert to former uses. The majority of the proposed pipeline route parallels TGP’s existing 300 Line rights-of-way. The majority of the aboveground facilities would be constructed within existing facility boundaries or existing permanent easement; however, an additional 0.1 acre of new operational right-of-way would be needed for the proposed aboveground facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us³ to

¹ A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

² The appendices referenced in this notice will not appear in the *Federal Register*. Copies of appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called “eLibrary” or from the Commission’s Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to page 6 of this notice.

³ “We,” “us,” and “our” refer to the environmental staff of the Commission’s Office of Energy Projects.

discover and address concerns the public may have about proposals. This process is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. We will publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.⁴ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation’s implementing regulations for section 106 of the National Historic Preservation Act, we are using this

⁴ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

notice to initiate consultation with the Pennsylvania State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁵ We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

Copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able

to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site at www.ferc.gov using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP16-4). Be sure you have selected an appropriate date range. 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 issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which 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. Go to www.ferc.gov/docs-filing/esubscription.asp.

Finally, public meetings or site visits will be posted on the Commission's calendar located at www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

Dated: November 23, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30427 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16-341-000]

RE Astoria LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding RE Astoria LLC's application for market-based rate authority, with an accompanying rate

tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 8, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 18, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30392 Filed 11-30-15; 8:45 am]

BILLING CODE 6717-01-P

⁵ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Commission Staff Attendance**

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Planning Committee

December 3, 2015, 9:30 a.m.–12:00 p.m. (EST)

PJM Transmission Expansion Advisory Committee

December 3, 2015, 11:00 a.m.–3:00 p.m. (EST)

The above-referenced meetings will be held at: PJM Conference and Training Center, PJM Interconnection, 2750 Monroe Boulevard, Audubon, PA 19403.

The above-referenced meetings are open to stakeholders.

Further information may be found at www.pjm.com.

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER14–972, *PJM Interconnection, L.L.C.*
 Docket No. ER14–1485, *PJM Interconnection, L.L.C.*
 Docket Nos. ER13–1957, *et al.*, *ISO New England, Inc., et al.*
 Docket Nos. ER13–1944, *et al.*, *PJM Interconnection, L.L.C., et al.*
 Docket No. ER15–1344, *PJM Interconnection, L.L.C.*
 Docket No. ER15–1387, *PJM Interconnection, L.L.C. and Potomac Electric Power Company*
 Docket No. ER15–2648, *PJM Interconnection, L.L.C.*
 Docket No. ER15–2562, *PJM Interconnection, L.L.C.*
 Docket No. ER15–2563, *PJM Interconnection, L.L.C.*
 Docket No. EL15–18, *Consolidated Edison Company of New York, Inc. v. PJM Interconnection, L.L.C.*
 Docket No. EL15–41, *Essential Power Rock Springs, LLC, et al. v. PJM Interconnection, L.L.C.*
 Docket No. ER13–1927, *et al.*, *PJM Interconnection, L.L.C., et al.*
 Docket No. ER15–2114, *PJM Interconnection, L.L.C. and Transource West Virginia, LLC*
 Docket No. EL15–79, *TransSource, LLC v. PJM Interconnection, L.L.C.*
 Docket No. EL15–95, *Delaware Public Service Commission, et al., v. PJM Interconnection, L.L.C., et al.*

Docket No. EL15–67, *Linden VFT, LLC v. PJM Interconnection, L.L.C.*

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

For more information, contact the following:

Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6604, Jonathan.Fernandez@ferc.gov.
 Alina Halay, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6474, Alina.Halay@ferc.gov.

Dated: November 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30400 Filed 11–30–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0753; FRL–9939–57–OW]

Request for Scientific Views on the Draft Recommended Aquatic Life Ambient Water Quality Criteria for Cadmium—2015

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its draft recommended aquatic life water quality criteria for cadmium for public comment. EPA is updating its national recommended ambient water quality criteria for cadmium in order to reflect the latest scientific information, and current EPA policies and methods. Following closure of this public comment period, EPA will consider scientific views from the public on this draft document as well as any new data or information received. EPA will then publish a **Federal Register** notice announcing the availability of the final cadmium criteria. Once finalized, EPA's water quality criteria for cadmium will provide recommendations to states and tribes authorized to establish water quality standards under the Clean Water Act. In adopting water quality standards, states set exposure protections for aquatic life; chronic exposure to cadmium negatively impacts growth, development, behavior, reproduction, and immune and endocrine systems in aquatic life.

DATES: Comments must be received on or before February 1, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–

OW–2015–0753, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Mike Elias, Health and Ecological Criteria Division, Office of Water (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–0120; email address: elias.mike@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information**

A. How can I get copies of this document and other related information?

1. *Docket:* All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA–HQ–OW–2015–0753 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–HQ–OW–2015–0753 Docket is (202) 566–2426. For additional information about EPA's public docket, visit EPA Docket Center

homepage at <http://www.epa.gov/epahome/dockets.htm>.

II. What are EPA’s recommended water quality criteria?

EPA’s recommended water quality criteria are scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water. Section 304(a)(1) of the Clean Water Act (CWA) directs EPA to develop and publish and, from time to time, revise criteria for protection of aquatic life and human health that accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and the latest scientific knowledge on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

EPA’s recommended section 304(a) criteria provide technical information to states and authorized tribes in adopting water quality standards (WQS) that ultimately provide a basis for assessing water body health and controlling discharges or releases of pollutants. Under the CWA and its implementing regulations, states and authorized tribes are to adopt water quality criteria to protect designated uses (e.g., public water supply, aquatic life, recreational

use, or industrial use). EPA’s recommended water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. EPA’s recommended criteria do not impose legally binding requirements. States and authorized tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality criteria that differ from these recommendations.

III. What is cadmium and why is EPA concerned about it?

Cadmium is a relatively rare, naturally occurring metal found in mineral deposits and distributed ubiquitously at low concentrations in the environment. Cadmium’s primary industrial uses are for the manufacturing of batteries, pigments, plastic stabilizers, metal coatings, alloys and electronics. Recently, cadmium has been used in manufacturing nanoparticles (quantum dots) for use in solar cells and color displays. Cadmium is a non-essential metal with no biological function in aquatic life. Chronic exposure leads to adverse effects on growth, reproduction, immune and endocrine systems, development and behavior in aquatic organisms.

IV. Information on the Draft Aquatic Life Ambient Water Quality Criteria for Cadmium

EPA prepared an update of the chronic aquatic life criteria document

for cadmium based on the latest scientific information and current EPA policies and methods, including EPA’s *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (1985) (EPA/R–85–100) and *Guidelines for Ecological Risk Assessment* (1998) (EPA/630/R–95/002F). The draft 2015 updated criteria include new data for 70 species and 49 genera not previously represented. The draft freshwater acute criterion was derived to be protective of endangered species and further lowered to protect the commercially and recreationally important rainbow trout, consistent with procedures described in EPA’s current aquatic life criteria guidelines; the freshwater acute value is approximately the same as the 2001 acute criterion for dissolved cadmium. The draft freshwater chronic criterion is slightly higher (i.e., less stringent) compared to the 2001 criterion for dissolved cadmium; this increase is primarily due to the inclusion of new data.

The draft estuarine/marine acute criterion for dissolved cadmium is slightly more stringent than the 2001 recommended criterion, which is primarily due to the addition of data. Draft changes in suggested values between 2001 and 2015 can be found in Table 1 below.

TABLE 1—SUMMARY OF 2001 AND 2015 DRAFT AQUATIC LIFE AWQC FOR CADMIUM

	2015 AWQC Update		2001 AWQC	
	Acute (1-hour, dissolved Cd) ^c	Chronic (4-day, dissolved Cd)	Acute (1-day, dissolved Cd)	Chronic (4-day, dissolved Cd)
Freshwater (Total Hardness = 100 mg/L as CaCO ₃) ^a .	2.1 µg/L ^b	0.73 µg/L	2.0 µg/L ^b	0.25 µg/L.
Estuarine/marine	35 µg/L	8.3 µg/L	40 µg/L	8.8 µg/L.

^a Freshwater acute and chronic criteria are hardness-dependent and were normalized to a hardness of 100 mg/L as CaCO₃ to allow the presentation of representative criteria values.

^b Lowered to protect the commercially and recreationally important species (rainbow trout), as per the 1985 Guidelines, Stephen et al. (1985).
^c The duration of the 2015 acute criteria was changed to 1-hour to reflect the 1985 Guidelines-based recommended acute duration.

EPA will consider the public comments, revise the document as necessary, and issue a final updated cadmium criteria document. This draft criteria document does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

V. What is the relationship between the draft chronic water quality criterion and your state or tribal water quality standards?

As part of the WQS triennial review process defined in section 303(c)(1) of the CWA, the states and authorized tribes are responsible for maintaining and revising WQS. Standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and may include general policies for application and implementation. Section 303(c)(1)

requires states and authorized tribes to review and modify, if appropriate, their WQS at least once every three years.

States and authorized tribes must adopt water quality criteria that protect designated uses. Protective criteria are based on a sound scientific rationale and contain sufficient parameters or constituents to protect the designated uses. Criteria may be expressed in either narrative or numeric form. States and authorized tribes have four options when adopting water quality criteria for

which EPA has published section 304(a) criteria. They can:

- (1) Establish numerical values based on recommended section 304(a) criteria;
- (2) Adopt section 304(a) criteria modified to reflect site-specific conditions;
- (3) Adopt criteria derived using other scientifically defensible methods; or
- (4) Establish narrative criteria where numeric criteria cannot be established or to supplement numerical criteria (40 CFR 131.11(b)).

EPA's regulation at 40 CFR 131.20(a) states that if a state does not adopt new or revised criteria parameters for which EPA has published new or updated recommendations, then the state shall provide an explanation when it submits the results of its triennial review to the Regional Administrator consistent with CWA section 303(c)(1). The recommendations in the draft cadmium criteria document may change based on scientific views shared in response to this notice. Upon finalization, the updated cadmium criteria would supersede EPA's previous 304(a) criteria for cadmium. Consistent with 40 CFR 131.21, new or revised water quality criteria adopted into law or regulation by states and authorized tribes on or after May 30, 2000 are applicable water quality standards for CWA purposes only after EPA approval.

VI. Solicitation of Scientific Views

EPA is soliciting additional scientific views, data, and information regarding the science and technical approach used by the Agency in the derivation of this draft criteria for cadmium. The Agency is also interested in obtaining information regarding new toxicity tests on *Hyalella azteca* (amphipod); latent acute effects of cadmium following short exposures; and new estuarine marine chronic toxicity tests.

VII. Additional Information

EPA conducted a contractor-led and independent external peer review of the draft Aquatic Life Ambient Water Quality Criteria for Cadmium document in October 2015. EPA will make the external peer review comments and Agency responses to these comments available in the docket with the revised draft cadmium criteria document at <http://www.regulations.gov>.

Dated: November 24, 2015.

Joel Beauvais,
Acting Deputy Assistant Administrator, Office of Water.

[FR Doc. 2015-30493 Filed 11-30-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2015-0667; FRL-9939-56-OW]

Extension of Public Comment Period for the National Wetland Condition Assessment 2011 Draft Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the draft report on the National Wetland Condition Assessment (NWCA 2011). In response to stakeholder requests, the comment period will be extended for an additional 30 days, from December 7, 2015 until January 6, 2016.

DATES: Comments must be received on or before January 6, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2015-0667, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gregg Serenbetz, Wetlands Division, Office of Water (4502T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202-566-1253; email address: serenbetz.gregg@epa.gov.

SUPPLEMENTARY INFORMATION: On November 5, 2015, EPA announced the availability of the draft report, *National Wetland Condition Assessment 2011: A Collaborative Survey of the Nation's*

Wetlands, and opened a 30-day public review and comment period to seek comment on the information contained in the draft report, the reasonableness of the conclusions, and the clarity with which the information is presented.

The original deadline to submit comments on the draft report was December 7, 2015. This action extends the comment period for 30 days. Written comments must now be received by January 6, 2016. The draft report and other supporting materials may also be viewed and downloaded from EPA's Web site at <http://www2.epa.gov/national-aquatic-resource-surveys/national-wetland-condition-assessment>.

Dated: November 24, 2015.

Benita Best-Wong,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 2015-30505 Filed 11-30-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9939-40-OAR]

Stratospheric Protection Division; Teleconference on the Clean Air Act Section 608 Technician Certification Program Test Bank

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Section 608 Technician Certification Program Test Bank teleconference.

SUMMARY: Notice is hereby given that the Stratospheric Protection Division will hold a public teleconference on December 9, 2015 on the Section 608 Technician Certification Test Bank. The teleconference will be an opportunity for stakeholders and members of the public to provide feedback on updating Test Bank questions. For further information regarding the teleconference, please contact Robert Burchard at the number and email below.

DATES: The Stratospheric Protection Division will hold a public teleconference on December 9, 2015 from 1 p.m. to 3 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

Background: Under the authority of Section 608 of the Clean Air Act (CAA) of 1990, as amended, the Environmental Protection Agency (EPA) established a technician certification program for persons ("technicians") who perform maintenance, service, repair, or disposal activities on appliances (with some enumerated exceptions) that could be

reasonably expected to release refrigerants from those appliances into the atmosphere. This program was established in regulations at 40 CFR part 82, subpart F. Under these regulations, at 40 CFR 82.152, the definition of “technician” specifically includes activities as follows:

- Attaching and detaching hoses and gauges to and from the appliance to measure pressure within the appliance;
- adding refrigerant to or removing refrigerant from the appliance; and
- any other activity that is reasonably expected to violate the integrity of the refrigerant circuit.

The Agency has four types of certification:

- For servicing small appliances (Type I).
- For servicing or disposing of high- or very high-pressure appliances, except small appliances and motor vehicle air conditioning systems (Type II).
- For servicing or disposing of low-pressure appliances (Type III).
- For servicing all types of equipment (Universal).

Technicians are required to pass a test given by an EPA-approved certifying organization to become certified under the program. EPA requires that all test questions come from its Test Bank.

Purpose of Meeting: The teleconference will be an opportunity for stakeholders and members of the public to provide feedback on updating Test Bank questions.

General Information: The agenda and materials are posted at Eventbrite. Go to: <https://www.eventbrite.com/e/test-bank-teleconference-tickets-19478479657>.

The event is: “Test Bank Teleconference,” Washington DC, Wednesday December 9, 11:00 a.m.

Meeting Access: For information on access or services for individuals with disabilities, please contact Robert Burchard at (202) 343-9126 or email at burchard.robert@epa.gov.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 2015-30372 Filed 11-30-15; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0718 and 3060-1183]

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 Office of Management and Budget (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 December 31, 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 Number: 3060-0718.

Title: Part 101 Rule Sections Governing the Terrestrial Microwave Fixed Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 9,500 respondents; 27,342 responses.

Estimated Time per Response: .25–3 hours.

Frequency of Response: On occasion and every 10 year reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits or retain benefits. Voluntary in case of Rural Microwave Flexibility Policy. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 309, 310, and 316.

Total Annual Burden: 36,223 hours.

Total Annual Cost: \$1,534,725.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget for a three-year extension of OMB Control Number 3060-0718 Part 101 rule sections require respondents to report or disclose information to the Commission or third parties, respectively, and to maintain records. These requirements are necessary for the Commission staff to carry out its duties to determine technical, legal and other qualifications of applicants to operate and remain licensed to operate a station(s) in the common carrier and/or private fixed microwave services. In addition, the information is used to determine whether the public interest, convenience, and necessity are being served as required by 47 U.S.C. 309 and to ensure that applicants and licenses comply with ownership and transfer restrictions imposed by 47 U.S.C. 310.

Without this information, the Commission would not be able to carry out its statutory responsibilities.

In November 2012, FCC modified this collection to include the voluntary requirements of the Rural Microwave Flexibility Policy that were adopted by the FCC on August 3, 2012, the FCC adopted and released a Backhaul Second Report and Order, FCC 12–87, WT Docket No. 10–153. This Policy directs the Wireless Telecommunication Bureau to favorably consider waivers of the requirements for payload capacity of equipment. The voluntary requirements will continue with this PRA collection. There is no change in the third party disclosure requirements.

OMB Control Number: 3060–1183.

Title: Establishment of a Public Safety Answering Point Do-Not-Call Registry, CG Docket No. 12–129.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Federal Government; Not-for-profit institutions; State Local or Tribal Government.

Number of Respondents and Responses: 106,500 respondents; 1,446,333 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 1 hour.

Frequency of Response: Recordkeeping requirement; Annual, monthly, on occasion and one-time reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, February 22, 2012.

Total Annual Burden: 792,667 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The rules adopted herein establish recordkeeping requirements for a large variety of entities, including small business entities. First, each Public Safety Answering Point (PSAP) may designate a representative who shall be required to file a certification with the administrator of the PSAP registry that they are authorized to place numbers onto that registry. The designated PSAP representative shall provide contact information including the PSAP

represented, name, title, address, telephone number and email address. Verified PSAPs shall be permitted to upload to the registry any PSAP telephone associated with the provision of emergency services or communications with other public safety agencies. On an annual basis designated PSAP representatives shall access the registry, review their numbers and remove any ineligible numbers from the registry. Second, an operator of automatic dialing equipment (OADE) is prohibited from contacting any number on the PSAP registry. Each OADE must register for access to the PSAP registry by providing contact information which includes name, business address, contact person, telephone number, email, and all outbound telephone numbers used to place autodialed calls. All such contact information must be updated within 30 days of any change. In addition, the OADE must certify that it is accessing the registry solely to prevent autodialed calls to numbers on the registry. An OADE must access and employ a version of the PSAP registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and maintain record documenting this process. No person or entity may sell, rent, lease, purchase, share, or use the PSAP registry for any purpose expect to comply with our rules prohibiting contact with numbers on the registry.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–30387 Filed 11–30–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10108 First Coweta Bank, Newnan, GA

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10108 First Coweta Bank, Newnan, GA (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First Coweta Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary;

including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: November 25, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–30415 Filed 11–30–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10040 Pinnacle Bank, Beaverton, OR

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10040 Pinnacle Bank, Beaverton, OR (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Pinnacle Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: November 25, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–30414 Filed 11–30–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10437 Palm Desert National Bank, Palm Desert, CA

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10437 Palm Desert National Bank, Palm Desert, CA (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Palm Desert National Bank (Receivership Estate); The Receiver has

made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: November 25, 2015.
Federal Deposit Insurance Corporation

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2015-30416 Filed 11-30-15; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

DATES: Comments must be submitted on or before February 1, 2016.

ADDRESSES: You may submit comments, identified by *FR 2436* or *FR 3036*, 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 OMB number in the subject line of the message.

- FAX: (202) 452-3819 or (202) 452-3102.

- Mail: Robert deV. 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 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: <http://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the

proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

- b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

- c. Ways to enhance the quality, utility, and clarity of the information to be collected;

- d. Ways to minimize the burden of information 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.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. *Report title:* Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB control number: 7100-0286.

Frequency: Semiannually.

Reporters: U.S. dealers of over-the-counter derivatives.

Estimated annual reporting hours: 3,776 hours.

Estimated average hours per response: 236 hours.

Number of respondents: 8.

General description of report: This information collection is voluntary and is authorized under section 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires the Federal Reserve Board and the Federal Open Market Committee (FOMC) to maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a) and section 12A of the FRA requires the FOMC to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country (12 U.S.C. 263). Because Federal Reserve System uses the

information obtained from the FR 2436 to fulfill these obligations, these statutory provisions provide the legal authorization for the collection of information on the FR 2436.

Additionally, because all survey respondents are currently registered as bank holding companies, this survey is also authorized under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)).

Because the release of this information would cause substantial harm to the competitive position of the entity from whom the information was obtained, the information collected on the FR 2436 may be granted confidential treatment under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which protects from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”

Abstract: This collection of information complements the triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100-0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. The Federal Reserve conducts both surveys in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements (BIS), which publishes global market statistics that are aggregates of national data.

Current Actions: The Federal Reserve proposes to add central counterparties as an additional counterparty type for foreign exchange contracts in Tables 1A, 1B, and 1C, for interest rate contracts in Tables 2A, 2B, and 2C, for equity contracts in Tables 3A, 3B, and 3C, for maturity of contracts in Table 5, and for credit exposures and liabilities in Table 6. The Federal Reserve’s interest in obtaining more detail on counterparty type arises because of the role that counterparty credit risk played in the recent global financial crisis. Central counterparties are of particular interest because after the crisis, financial regulators have encouraged greater use of central counterparties for derivatives contracts. The proposed revision will allow the Federal Reserve to better track the use of central counterparties for all types of derivatives contracts. Currently, central counterparties are broken out for only CDS contracts (Table 4A, 4B, 4C, 4D, 4F, and 4G). In addition, the BIS is expanding its data collection on the global OTC derivatives market to include a breakdown of contracts with central counterparties, and the proposed revision will allow the United States to

align its data collection with BIS reporting guidelines.

The Federal Reserve also proposes to amend the definition of central counterparties in the FR 2436 instructions to align more closely with the definition used in capital regulations.¹ Currently, the FR 2436 instructions give a more general definition of central counterparties and then list central counterparties in Annex V. Since the last revision of the FR 2436, many more central counterparties have been established. As a result of these changes, Annex V will be removed.

The Federal Reserve proposes to correct a row heading in Table 5, to update the list of reporting dealers in Annex II, to drop Annex I (a copy of the report form) from the instructions and renumber the remaining annexes, and to make minor corrections to instructions.

2. Report title: Central Bank Survey of Foreign Exchange and Derivative Market Activity.

Agency form number: FR 3036.

OMB control number: 7100-0285.

Frequency: Triennially.

Reporters: Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

Estimated annual reporting hours: 1,320 hours.

Estimated average hours per response: 55 hours.

Number of respondents: 24.

General description of report: This information collection is voluntary and is implicitly authorized under section 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires the Federal Reserve Board and the Federal Open Market Committee (FOMC) to maintain long run growth of the monetary and credit aggregates commensurate with the economy’s long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a) and section 12A of the FRA requires the FOMC to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country (12 U.S.C. 263). Because Federal Reserve System uses the information obtained from the FR 3036 to fulfill these obligations, these statutory provisions provide the legal

authorization for the collection of information on the FR 3036.²

Because the Federal Reserve believes the release of this information would cause substantial harm to the competitive position of the entity from whom the information was obtained, the information collected on the FR 3036 may be granted confidential treatment under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which protects from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”

Abstract: The FR 3036 is the U.S. part of a global data collection that is conducted by central banks once every three years. More than 50 central banks plan to conduct the survey in 2016. The Bank for International Settlements (BIS) compiles aggregate national data from each central bank to produce global market statistics. The Federal Reserve Bank of New York (FRBNY) uses the survey to monitor activity in the foreign exchange and derivatives markets. Survey results also provide perspective on market developments for the Manager of the System Open Market Account, on the Desk’s trading relationships, and for planning Federal Reserve and U.S. Treasury foreign exchange operations. Respondents also use the published data to gauge their market share.

Current Actions: The Federal Reserve proposes the following revisions to the survey:

1. For foreign exchange execution methods, FRBNY would separately collect “dark pools” under electronic-indirect trading, and would clarify what would be reported under “Other electronic communication networks.” (Dark pools are private platforms for trading securities especially for large trade sizes, where access is restricted and quotes are not revealed.) The instructions were changed to provide a definition of dark pools, as well as updated guidance on definitions used for the Execution Method schedule.

2. The category “Others” under electronic-indirect trading would be deleted as this item is being deleted by the BIS. The deletion will ensure the FR 3036 aligns with the BIS survey.

² Additionally, depending upon the survey respondent, the information collection may be authorized under a more specific statute. Specifically, the Federal Reserve is authorized to collect information from state member banks under section 9 of the Federal Reserve Act (12 U.S.C. 324); from bank holding companies (and their subsidiaries) under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); from Edge and agreement corporations under section 25 and 25A of the Federal Reserve Act (12 U.S.C. 602 and 625); and from U.S. branches and agencies of foreign banks under section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2)) and under section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)).

¹ See Section 217.2 of 12 CFR Chapter II, Subchapter A.

3. The questions on algorithmic and high frequency trading would be deleted as this item is being deleted by the BIS. The deletion will ensure the FR 3036 aligns with the BIS survey.

4. The questions on the number of business days, estimated coverage of the survey and concentration levels, and trading activity trends would be deleted. The FRBNY will coordinate responses to these questions with the Secretary of the New York Foreign Exchange Committee and its Operations Subcommittee. This change will allow for an improvement in data quality as it eliminates issues with dealer weighting and poor response rates.

5. The questions on "retail-driven" transactions would be deleted. The FRBNY will coordinate responses to these questions with the Secretary of the New York Foreign Exchange Committee and its Operations Subcommittee. This change will allow for an improvement in data quality as it eliminates issues with dealer weighting and poor response rates.

Board of Governors of the Federal Reserve System, November 25, 2015.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2015-30446 Filed 11-30-15; 8:45 am]

BILLING CODE 6210-01-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 December 15, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *James N. Sanders, Plymouth, Minnesota, as managing member of Thanh Van LLC, Minneapolis, Minnesota, Van Sanders, Plymouth, Minnesota, as managing member of JNS LLC, Minneapolis, Minnesota, and James N. Sanders and Van Sanders,*

Trustees of The Van Sanders Revocable Trust, Minneapolis, Minnesota; to join the Tychman/Sanders Group, and acquire voting shares of The Tysan Corporation, Minneapolis, Minnesota, and thereby indirectly acquire voting shares of Lake Community Bank, Long Lake, Minnesota, and Pine Country Bank, Little Falls, Minnesota.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *The Morris Family Trust, Frank E. Morris and Janet G. Morris, Gainesville, Texas, as Trustees and to join the Morris Family Group, a group acting in concert; to retain voting shares of Red River Bancorp, Inc., and thereby indirectly retain voting shares of First State Bank, both in Gainesville, Texas.*

Board of Governors of the Federal Reserve System, November 25, 2015.

Michael J. Lewandowski,
Associate Secretary of the Board.

[FR Doc. 2015-30438 Filed 11-30-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than December 24, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Level One Bancorp, Inc., Farmington Hills, Michigan; to acquire 100 percent of the voting shares of Bank of Michigan, Farmington Hills, Michigan.*

Board of Governors of the Federal Reserve System, November 25, 2015.

Michael J. Lewandowski,
Associate Secretary of the Board.

[FR Doc. 2015-30436 Filed 11-30-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the notices must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Tradition Bancshares, Inc., Edina, Minnesota; to acquire 22 percent of the voting shares of First Lawyers Trust Company, Rapid City, South Dakota, and thereby engage in trust company functions, pursuant to section 225.28(b)(5).*

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Stockmens Financial Corporation*, and *Stockmens Limited Partnership*, both in Rapid City, South Dakota, to acquire 22 percent of the voting shares of *First Lawyers Trust Company*, Rapid City, South Dakota, and thereby continue to engage in trust activities, pursuant to section 225.28(b)(5).

Board of Governors of the Federal Reserve System, November 25, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-30437 Filed 11-30-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 142 3133]

Progressive Chevrolet Company and Progressive Motors, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 28, 2015.

ADDRESSES: Interested parties may file a comment at <https://ftcpublic.commentworks.com/ftc/progressivechevroletconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Progressive Chevrolet Company and Progressive Motors, Inc.—Consent Agreement; File No. 142 3133” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/progressivechevroletconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Progressive Chevrolet Company and Progressive Motors, Inc.—Consent Agreement; File No. 142 3133” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex D), Washington, DC

20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael Rose, East Central Region, (216) 263-3412, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 24, 2015), on the World Wide Web at: <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 28, 2015. Write “Progressive Chevrolet Company and Progressive Motors, Inc.—Consent Agreement; File No. 142 3133” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed

in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/progressivechevroletconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#/home>, you also may file a comment through that Web site.

If you file your comment on paper, write “Progressive Chevrolet Company and Progressive Motors, Inc.—Consent Agreement; File No. 142 3133” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 28, 2015. You can find more information, including routine

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("FTC") has accepted, subject to final approval, an agreement containing a consent order from Progressive Chevrolet Company and Progressive Motors, Inc. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondents are motor vehicle dealers. According to the FTC complaint, respondents advertised that consumers could lease the advertised vehicles at the monthly payment amounts prominently stated in their advertisements. The complaint alleges that respondents violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), because they failed to disclose, and/or failed to disclose adequately, that the offer requires a minimum credit score that is greater than the credit score of the majority of consumers. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. The complaint also alleges that respondents' leasing advertisements violated the Consumer Leasing Act (CLA) and Regulation M by failing to disclose or to disclose clearly and conspicuously required terms. Specifically, respondents' advertisements prominently stated the monthly payment amounts for a vehicle lease—a triggering term under the CLA—but failed to disclose, or inconspicuously disclosed at the bottom of the ad in much smaller type, the required information set forth by the CLA. The proposed order is designed to prevent the respondents from engaging in similar deceptive practices in the future.

- Part I.A. addresses the Section 5 allegation by prohibiting respondents from advertising the amount of any monthly payment, periodic payment, initial payment, or down payment, or the length of payment term, unless the representation is non-misleading, and respondents clearly and conspicuously disclose all qualifications or restrictions on the consumer's ability to obtain the

represented terms, including qualifications or restrictions based on the consumer's credit score. Additionally, if a majority of consumers likely will not be able to meet a credit score qualification or restriction stated in the advertisement, respondents must clearly and conspicuously disclose that fact.

- Part I.B.1. provides that the respondents shall not misrepresent the cost of financing the purchase of an automobile, including by misrepresenting the amount or percentage of the down payment, the number of payments or period of repayment, the amount of any payment, and the repayment obligation over the full term of the loan, including any balloon payment.

- Part I.B.2. provides that the respondents shall not misrepresent the cost of leasing an automobile, including by misrepresenting the total amount due at lease inception, the down payment, amount down, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments.

- Part I.C. provides that the respondents shall not misrepresent any other material fact about the price, sale, financing, or leasing of any automobile.

- Part II of the order addresses the CLA and Regulation M allegations by prohibiting lease advertisements that:

A. State the amount of any payment or that any or no initial payment is required at lease inception, without disclosing clearly and conspicuously the following terms:

- That the transaction advertised is a lease;
- The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
- the number, amounts, and timing of scheduled payments;
- whether or not a security deposit is required; and
- that an extra charge may be imposed at the end of the lease term where the consumer's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

B. Fail to comply in any respect with Regulation M, 12 CFR part 213, as amended, and the Consumer Leasing Act, 15 U.S.C. 1667–1667f, as amended.

- Part III requires respondents to keep copies of relevant advertisements and materials containing representations.

- Part IV requires that respondents provide copies of the order to certain of their personnel.

- Part V requires notification to the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part VI requires the respondents to file compliance reports with the Commission. Finally, Part VII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–30358 Filed 11–30–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office for State, Tribal, Local and Territorial Support (OSTLTS); Meeting and Tribal Consultation Session

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009, and September 23, 2004, Consultation and Coordination with Indian Tribal Governments, CDC/Agency for Toxic Substances and Disease Registry (ATSDR), announces the following meeting and Tribal Consultation Session:

Name: Tribal Advisory Committee (TAC) Meeting and 14th Biannual Tribal Consultation Session.

Times and Dates

8:00 a.m.–5:00 p.m., February 9, 2016
(TAC Meeting)

8:00 a.m.–5:00 p.m., February 10, 2016
(TAC Meeting & 14th Biannual Tribal Consultation Session)

Place: The TAC Meeting and Tribal Consultation Session will be held at CDC Headquarters, 1600 Clifton Road NE., Global Communications Center, Auditorium B3, Atlanta, Georgia 30329–4027.

Status: The meetings are being hosted by CDC/ATSDR in-person only and are open to the public. Attendees must pre-register for the event by Wednesday, January 6, 2016, at the following link: <http://www.cdc.gov/tribal/meetings.html>.

Purpose: The purpose of these recurring meetings is to advance CDC/

ATSDR support for and collaboration with tribes, and to improve the health of tribes by pursuing goals that include assisting in eliminating the health disparities faced by Indian Tribes; ensuring that access to critical health and human services and public health services is maximized to advance or enhance the social, physical, and economic status of American Indian/Alaska Native (AI/AN) people; and promoting health equity for all AI/AN people and communities. To advance these goals, CDC/ATSDR conducts government-to-government consultations with elected tribal officials or their authorized representatives. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension.

Matters for Discussion: The TAC and CDC leaders' discussions will include the following public health topics: Adverse childhood experiences, e-cigarettes, motor vehicle-related injury prevention, and CDC's budget.

During the 14th Biannual Tribal Consultation Session, tribes and CDC leaders will engage in a listening session with CDC's director and roundtable discussions with CDC senior leaders. Tribes will also have an opportunity to present testimony about tribal health issues.

Tribal leaders are encouraged to submit written testimony by January 8, 2016, to Alleen R. Weathers, Public Health Advisor for the Tribal Support Unit, OSTLTS, via mail to 4770 Buford Highway NE., MS E-70, Atlanta, Georgia, 30341-3717, or email TribalSupport@cdc.gov.

Based on the number of tribal leaders giving testimony and the time available, it may be necessary to limit the time for each presenter.

The agenda is subject to change as priorities dictate.

Information about the TAC, CDC/ATSDR's Tribal Consultation Policy, and previous meetings can be found at the following Web link: <http://www.cdc.gov/tribal>.

Contact person for more information: Alleen R. Weathers, Public Health Advisor, CDC/OSTLTS, 4770 Buford Highway NE., MS E-70, Atlanta, Georgia 30341-3717; email: alleen.weathers@cdc.hhs.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the

Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015-30357 Filed 11-30-15; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1658-NC]

RIN 0938-ZB23

Medicare Program; Inpatient Prospective Payment Systems; 0.2 Percent Reduction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: In accordance with the Court's October 6, 2015 order in *Shands Jacksonville Medical Center, Inc., et al. v. Burwell*, No. 14-263 (D.D.C.) and consolidated cases that challenge the 0.2 percent reduction in inpatient prospective payment systems (IPPS) rates to account for the estimated \$220 million in additional FY 2014 expenditures resulting from the 2-midnight policy, this notice discusses the basis for the 0.2 percent reduction and its underlying assumptions and invites comments on the same in order to facilitate our further consideration of the FY 2014 reduction. We will consider and respond to the comments received in response to this notice, and to comments already received on this issue in a final notice to be published by March 18, 2016.

DATES: *Comment date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. e.s.t. on February 2, 2016.

ADDRESSES: In commenting, refer to file code CMS-1658-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this notice to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare &

Medicaid Services, Department of Health and Human Services, Attention: CMS-1658-NC, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1658-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ing-Jye Cheng, (410) 786-2260 or Don Thompson, 410-786-6504.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have

been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. e.s.t. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

In the final rule titled “Medicare Program; Hospital Inpatient Prospective Payment Systems for the Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Final Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers; Hospital Conditions of Participation; Payment Policies Related to Patient Status” (hereinafter referred to as the FY 2014 IPPS/LTCH PPS final rule), we adopted the 2-midnight policy effective October 1, 2013 (78 FR 50906 through 50954). Under the 2-midnight policy, an inpatient admission is generally appropriate for Medicare Part A payment if the physician (or other qualified practitioner) admits the patient as an inpatient based upon the expectation that the patient will need hospital care that crosses at least 2 midnights. In assessing the expected duration of necessary care, the physician (or other practitioner) may take into account outpatient hospital care received prior to inpatient admission. If the patient is expected to need less than 2 midnights of care in the hospital, the services furnished should generally be billed as outpatient services. Our actuaries estimated that the 2-midnight policy would increase expenditures by approximately \$220 million in FY 2014 due to an expected net increase in inpatient encounters. We used our authority under section 1886(d)(5)(I)(i) of the Act to make a reduction of 0.2 percent to the standardized amount, the Puerto Rico standardized amount, and the hospital-specific payment rate, and we used our authority under section 1886(g) of the Act to make a reduction of 0.2 percent to the national capital Federal rate and the Puerto Rico-specific capital rate, in order to offset this estimated \$220 million in additional IPPS expenditures in FY 2014. (In addition to an operating IPPS payment for each discharge, hospitals also receive a capital IPPS

payment for each discharge so a net increase in the number of inpatient encounters also results in increased expenditures under the capital IPPS.)

II. Supplemental Notice Requesting Comments on the FY 2014 IPPS Rule

A. Overview

As noted in section I. of this notice with comment period, we estimated based on an actuarial model that the 2-midnight policy would increase IPPS expenditures by approximately \$220 million in FY 2014 due to an expected net increase in inpatient encounters, as described in greater detail in an August 19, 2013 memorandum. (See Appendix A of this notice.)

Section II.B. of this notice with comment period provides additional details on the calculation of this estimate (that is, what we did) and section II.C. of this notice with comment period discusses the actuaries’ assumptions, including why those assumptions were reasonable. We collectively refer to the calculations and assumptions as the actuarial “model” for estimating the financial impact of the policy change. Section II.D. of this notice with comment period discusses the status of an analysis currently being conducted by our actuaries of the claims experience since the implementation of the 2-midnight policy. We seek comment on all aspects of the model used by our actuaries, including but not limited to those for which we specifically request comment. We seek comment on, and will consider comments on, all aspects of the 0.2 percent reduction.

B. Calculation of the Impact of the 2-Midnight Policy

The task of modeling the impact of the 2-midnight policy on hospital payments begins with a recognition that some cases that were previously outpatient cases will become inpatient cases and vice versa. Therefore, our actuaries were required to develop a model that determined the net effect of the number of cases that would move in each direction.

In estimating the number of outpatient cases that would shift to the inpatient setting, we analyzed calendar year (CY) 2011 claims that included spending for observation care or a major procedure. For the purposes of the –0.2 percent estimate, CMS physicians defined observation care as Outpatient Prospective Payment System (OPPS) claims containing Healthcare Common Procedure Coding System (HCPCS) code “G0378”, *Hospital observation service, per hour*, or HCPCS code “G0379”

Direct admission of patient for hospital observation care. We used the difference between the first date of service for the HCPCS code (generally the first date that the service represented by that code was provided to the patient) and the “claim through” date (generally the last date any service on the claim was provided to the patient) to determine the length of the observation care. In this manner, we identified approximately 350,000 observation care stays of 2 midnights or more using the CY 2011 claims.

A list of the Ambulatory Payment Classifications (APCs) containing the major procedures used in the determination of the –0.2 percent estimate can be found in Appendix B of this notice with comment period. As with observation care, the difference between the first date of service for the HCPCS code and the claim through date was used to determine the length of the major procedure. We identified approximately 50,000 claims containing major procedures with stays lasting 2 midnights or more using the CY 2011 claims.

Combining the observation care and the major procedures resulted in approximately 400,000 claims for services of 2 midnights or more from the CY 2011 claims data.

For additional details on the identification of the outpatient claims, see Appendix C of this notice with comment period.

In estimating the number of inpatient stays that would shift to the outpatient setting, FY 2011 inpatient claims containing a surgical Medicare Severity Diagnosis Related Group (MS-DRG) were analyzed. The number of these stays that spanned less than 2 midnights, based on the length of stay, was approximately 360,000. FY 2009 and FY 2010 data were also analyzed and the results were consistent with the FY 2011 results.

For additional details on the identification of the inpatient claims, see Appendix D of this notice with comment period.

Our actuaries also assumed that payment under the OPSS would be 30 percent of the payment under the IPPS for encounters shifting between the two systems, and that the beneficiary is responsible for 20 percent of the Part B cost.

The number of short stay discharges (for this purpose, same day discharges and discharges crossing one or two midnights) represented about 28 percent of total discharges in FY 2011, and approximately 17 percent of total spending for the total discharges. The assumed net increase of 40,000

inpatient discharges (= 400,000 OPPI to IPPS—360,000 IPPS to OPPI) represented an increase of 1.2 percent in the number of short stay discharges. Taking 1.2 percent of 17 percent of total spending results in the estimate at the time of the FY 2014 IPPS/LTCH PPS rulemaking that the 2-midnight policy would result in an additional \$290 million in inpatient expenditures, as shown for FY 2014 in the table “Impact on Medicare Expenditures” found in the memorandum in Appendix A of this notice. The estimates for the additional inpatient expenditures for FYs 2015 through 2018 can also be found in the table (for example, \$320 million for FY 2015).

For the outpatient expenditure estimate, taking 30 percent (based on the assumption that payment under the OPPI would be 30 percent of the payment under the IPPS) of 80 percent (to account for the assumed 20 percent beneficiary responsibility) of the \$290 million inpatient estimate results in approximately \$70 million less outpatient expenditures. The estimates for the reduction in outpatient expenditures for FYs 2015 through 2018 can also be found in the table (For example, \$80 million for FY 2015.)

The estimated \$290 million increase in inpatient expenditures less the estimated \$70 million decrease in outpatient expenditures yields the estimated net impact by our actuaries at the time of the FY 2014 IPPS/LTCH PPS rulemaking of an additional \$220 million in expenditures in FY 2014 as a result of the 2-midnight policy. The estimated additional expenditures for FYs 2015 through 2018 can be similarly calculated.

Using the information contained in this section and the appendices to this notice, interested members of the public should be able to calculate the estimate by our actuaries of an additional \$220 million in expenditures in FY 2014 as a result of the 2-midnight policy. (For interested members of the public who wish to perform this calculation, we highlight the discussion in Appendix D regarding the number of inpatient cases identified in the MedPAR data and the Integrated Data Repository.)

C. Discussion of the Assumptions Made in the Calculation of the Impact of the 2-Midnight Policy

As our actuaries stated in the August 2013 memorandum, the estimates depend critically on the assumed utilization changes in the inpatient and outpatient hospital settings. We discuss the assumptions underlying the estimates further in this section.

1. Estimated Outpatient Cases That Would Shift to the Inpatient Setting

As indicated previously, in estimating the number of outpatient cases that would shift to the inpatient setting, CY 2011 claims that included spending for observation care or a major procedure were analyzed. This was done in order to remove claims with diagnostic services or minor procedures that would be less likely to trigger an encounter in which there was a continuous stay. (See the discussion in Appendix C of this notice with comment period.)

For the purpose of the –0.2 percent estimate, observation care was defined as OPPI claims containing HCPCS “G0378,” *Hospital observation service, per hour*, or “G0379” *Direct admission of patient for hospital observation care*. At the time the –0.2 percent estimate was being developed, we were also examining establishing comprehensive APCs under the OPPI (for a summary of the results of this examination see the CY 2014 OPPI proposed rule (78 FR 43540)). One of the claims analyses that we developed for this purpose included service counts of G0378 and G0379 and significant procedures. Since this analysis included the universe of services of interest for the 2-midnight policy at that time, it was well-suited for use in the development of the –0.2 percent estimate as well. For a discussion of the data specifications for this claims analysis, and how it was subset for the 2-midnight analysis, see Appendix C of this notice with comment period.

However, in retrospect, using HCPCS G0378 and G0379 may have been an overly conservative definition of observation services, because not every use of observation services would be captured by the G-codes. As indicated in the Medicare Claims Processing Manual,¹ hospitals are required to report observation charges under the revenue center code “0760”, *Treatment or observation room—general classification*, or “0762” *Treatment or observation room—observation room* regardless of whether or not the G-codes are billed.

We also note that the Office of the Inspector General (OIG) used this revenue center code definition of observation services in its report “Hospitals’ Use of Observation Stays and Short Inpatient Stays”² (OEI–02–12–00040).

¹ See section 290.2.1 in Chapter 4 of the Medicare Claims Processing Manual available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c04.pdf>

² Available at <http://oig.hhs.gov/oei/reports/oei-02-12-00040.pdf>.

If we had defined observation services using revenue center codes 0760 and 0762 instead of HCPCS codes G0378 and G0379, we would have identified approximately 400,000 claims for observation services spanning 2 midnights or more (instead of 350,000) and we would have estimated approximately 450,000 cases shifting from the outpatient to the inpatient setting (400,000 claims for observation stays spanning more than 2 midnights and approximately 50,000 claims for major procedures) instead of the 400,000 cases used in the estimate. We seek comment on whether it would be more appropriate to define observation services using revenue center codes 0760 and 0762 rather than HCPCS codes G0378 and G0379.

Another consequence of the use of the claims analyses that we developed for the purpose of the comprehensive APCs involves the approach used to determine whether observation stays spanned 2 midnights or more. In general, in the claims analysis for comprehensive APC development, we examined the difference between the date of service for the primary HCPCS code on the claim and the claim through date. For the observation services in this analysis, we used the difference between first date of service for the observation service and the claim through date to determine the length of the observation case. However, in retrospect, as with the definition of observation services, this may have been an overly conservative approach to determining the length of the observation case. Under the 2-midnight policy, for purposes of determining whether the 2 midnight benchmark was met and, therefore, whether inpatient admission was generally appropriate, the expected duration of care includes the time the beneficiary spent receiving outpatient services within the hospital. This includes services such as observation services, treatments in the emergency department, and procedures provided in the operating room or other treatment area. It is not just the time spent receiving observation services. As such, it may have been more appropriate to have used the “claim from” date (in general the date that the beneficiary entered the hospital), rather than the first date that observation services were provided in order to determine when claims containing observation services spanned 2 midnights or more. If we had used such an approach when developing the original estimate, instead of approximately 350,000 claims with observation services spanning 2

midnights or more, the estimate would have been approximately 430,000 claims under the HCPCS code G0378/ G0370 definition of observation services and approximately 520,000 under the revenue center code 0760/0762 definition of observation services. When combined with our estimate of major procedures, we would have estimated as many as 570,000 cases shifting from the outpatient to the inpatient setting under this approach instead of the 400,000 cases used in the estimate. We seek comment on whether it would be more appropriate to have used the claim from date rather than the first date that observation services were provided in order to determine when claims containing observation services spanned 2 midnights or more.

2. Estimated Inpatient Cases That Would Shift to the Outpatient Setting

We believed some proportion of the inpatient cases under 2 midnights in the historical data would remain inpatient because we believed that behavioral changes by hospitals and admitting practitioners would mitigate some of the impact of cases shifting between the inpatient hospital setting and the outpatient hospital setting. The question was how to reasonably estimate what that proportion would be for purposes of modelling the impact of the 2-midnight policy. We believe that a model distinguishing between medical and surgical cases is a reasonable approach to use in determining what proportion of inpatient cases would remain in the inpatient setting and what proportion would shift to the outpatient setting.

Specifically, in estimating the number of inpatient stays that would shift to the outpatient setting, FY 2011 inpatient claims containing a surgical MS-DRG were analyzed. Our actuaries assumed that those spanning less than 2 midnights (other than those stays that were cut short by a death or transfer) would shift from the inpatient setting to the outpatient setting. Stays that were cut short by a death or transfer were excluded because under the 2-midnight policy those cases would generally be considered to be appropriately treated on an inpatient basis. (For a discussion of the data specifications for the inpatient claims analysis, see Appendix D of this notice.)

Claims containing medical MS-DRGs were excluded because, as stated in the August 2013 memorandum, "it was assumed that these cases would be unaffected by the policy change." Our actuaries excluded medical MS-DRGs when developing the -0.2 percent estimate because they believed that due

to behavioral changes by hospitals and admitting practitioners most inpatient medical encounters spanning less than 2 midnights before the current 2-midnight policy was implemented might be reasonably expected to extend past 2 midnights after its implementation and would thus still be considered inpatient. They believed that the clinical assessments and protocols used by physicians to develop an expected length of stay for medical cases were, in general, more variable and less defined than those used to develop an expected length of stay for surgical cases.

Evidence of this medical/surgical dichotomy is seen in proprietary utilization review tools such as the Milliman Care Guidelines, which are guidelines based originally on actuarial data, and InterQual, which are clinically oriented guidelines. Both tools reflect the same types of distinctions between medical and surgical cases that we assumed based on CMS medical staff's clinical judgment. Although all guidelines, and all surgeons, advise patients that individual patients vary in their post-operative courses, there are predictable post-operative courses that are based on such factors as whether or not the abdominal cavity or the pleural cavity are entered, the expected time for recovery from anesthesia, the expected time to resume urinary function, the expected time to resume bowel function, the expected time to regain mobility, and the typical period for common post-operative interventions. These are by no means absolute but are fairly well-defined, as evidenced by the surgeon's ability to generally inform the patient, within a day or so, how long the patient probably can expect to remain in the hospital if treatment goes well. Part of this decreased variance is due to the fact that the reason for admission, a specific surgical procedure, is well-defined.

Conversely, for medical admissions a single diagnosis typically covers a much broader spectrum of possibilities. Pneumonia may have different etiologies, with vastly different expected lengths of stay. A stroke may be minor, allowing a brief diagnostic workup to be followed by outpatient rehabilitation, or catastrophic, triggering a prolonged stay before stabilization and discharge. Chronic obstructive pulmonary disease (COPD) and congestive heart failure (CHF) may respond rapidly to medication adjustments or may result in Intensive Care Unit (ICU) stays. Unlike the surgical procedure, the medical diagnosis does not imply a reasonably consistent set of activities. In fact, typical medical protocols are highly

branched, with the initial portion of hospital care typically focused on diagnostics that serve to differentiate patient subsets that define treatments and simultaneously suggest different hospital courses. The increased variability in the medical protocols is influenced by the fact that, for planned surgical admissions, more of the branching takes place in the process of selecting a specific surgical intervention before the patient is admitted, while for medical admissions more of the branching takes place after admission.

For these reasons, the clinical judgment of CMS's medical staff supports our actuaries' estimate of the impact of the 2-midnight policy on program payments to hospitals.

3. Estimated IPPS/OPPS Cost Difference for Cases That Shift Between the IPPS and OPPS

Our actuaries assumed that the OPPS cost for services that shift between the OPPS and IPPS was 30 percent of the IPPS cost, and the beneficiary is responsible for 20 percent of the OPPS cost. The 30 percent is an assumption about the difference on average. While payment under the OPPS is on average less than payment under the IPPS for these cases, the key question is how much less on average? For any given case, the payment differential will vary. We note that when the OIG examined the payment differential between short inpatient stays and observation stays in their 2013 report "Hospitals' Use of Observation Stays and Short Inpatient Stays for Medicare Beneficiaries" (OEI-02-12-00040), it found that on average Medicare paid nearly three times more for a short inpatient stay than an observation stay (p. 12). This is consistent with the 30 percent estimate used in the development of the -0.2 percent estimate. We seek comment on whether it is appropriate to utilize a 30 percent estimate.

D. Claims Experience Since the Implementation of the 2-Midnight Policy

Our actuaries are currently conducting an analysis of claims experience for FY 2014 and FY 2015 in light of available data, including the MedPAR data. Because that analysis is not yet complete, we are not proposing in this notice with comment period to reconsider the 0.2 percent reduction in the FY 2014 IPPS/LTCH PPS final rule based on the results of the claims analysis. However, we are seeking comment on whether we should await the completion of the actuaries' analysis of FY 2014 and FY 2015 data before resolution of this proceeding.

We note that any potential model revisions do not necessarily mean that the net result of the initial modelling, namely the ultimate -0.2 percent adjustment, was incorrect. As we have indicated since the -0.2 percent estimate was developed, the assumptions used for purposes of reasonably estimating overall impacts cannot be construed as absolute statements about every individual encounter. Under the original 2-midnight policy, our actuaries did not expect that every single surgical MS-DRG encounter spanning less than 2 midnights would shift to the outpatient setting, that every single medical MS-DRG encounter would remain in the inpatient setting, and that every single outpatient observation stay or major surgical encounter spanning more than 2 midnights would shift to the inpatient setting. However, for purposes of developing the -0.2 percent adjustment estimate under the original policy, a model where cases involving a surgical MS-DRG spanning less than 2 midnights in the historical data shifted to the outpatient setting, cases involving a medical MS-DRG spanning less than 2 midnights in the historical data remained in the inpatient setting, and outpatient observation stays and major surgical encounters spanning more than 2 midnights in the historical data shifted to the inpatient setting yielded a reasonable estimate of the net effect of the 2-midnight policy when it was adopted. To the extent the actual experience might vary for each of the individual assumptions, our actuaries estimated that the total net effect of that variation would not significantly impact the estimate.

There were also factors that could not be anticipated at the time of the initial modelling that may influence the actual experience, such as the prohibition on Recovery Auditor post-payment reviews that became effective October 1, 2013. This prohibition might have affected hospital behavior in unexpected ways.

Our actuaries will continue to review the claims experience for FY 2014 and subsequent years under the 2-midnight policy to evaluate the assumptions underlying the original estimate. As we indicated in the CY 2016 OPPS/ASC final rule, we will take the reviews into account during future rulemaking, including potential future rulemaking on the issue of whether or not the policy change that we adopted for the medical review of inpatient hospital admissions under Medicare Part A described in the CY 2016 OPPS final rule will have a differential impact on expenditures compared to the original policy. Although our analysis of the historical data since the implementation of the 2-midnight policy is not yet complete, and we do not propose to reconsider the reduction in light of that analysis at this time, we are including this discussion in this notice because we received many comments on the CY 2016 OPPS proposed rule asserting that the claims data since the adoption of the original 2-midnight policy is inconsistent with our original -0.2 percent estimate. We continue to invite comment on this issue. As indicated in the CY 2016 OPPS final rule, we intend to respond to all public comments regarding the validity of the original -0.2 percent adjustment that we received in response to the CY 2016 OPPS proposed rule as part of these Shands remand

proceedings and publish a final notice by March 18, 2016.

We elected to promulgate the -0.2 percent adjustment for the reasons described in the FY 2014 IPPS/LTCH PPS proposed and final rules and elaborated upon in this notice with comment period. We request comment on all aspects of that decision, including but not limited to the information, assumptions, and analyses supporting the adjustment.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: November 20, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: November 24, 2015.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

Appendix A

BILLING CODE 4120-01-C

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop X23-01-21
Baltimore, Maryland 21244-3850

**Office of the Actuary**

DATE: August 19, 2013**SUBJECT:** Estimated Financial Effects of 2 Midnight Policy

This memorandum summarizes the Office of the Actuary's financial estimate for clarifying inpatient vs. outpatient hospital services when all stays which span 2 midnights will be presumed to be inpatient. Recent events related to this issue and relevant to the discussion are described below.

Based on longstanding CMS policy, if a hospital submitted a claim for Part A inpatient services and that claim was denied because the service was (or should have been) provided in an outpatient setting, then the hospital could not subsequently submit a claim for Part B reimbursement.³ A recent decision by an Administrative Law Judge (ALJ), which has been confirmed by the Departmental Appeals Board, authorizes Part B re-billing for all such denied Part A claims that have been appealed and upheld by an ALJ. CMS addressed the issue of re-billing, as summarized below.

- An Administrator Ruling allowed providers to automatically re-bill Part B in such cases, starting in January of 2013 and ending in September of 2013, without having to go through the appeals process.
- Regulatory change would restrict re-billing to only those instances where the re-billed claim for Part B services was submitted within 12 months of the original date of service. This change is assumed to take effect beginning in October of 2013.
- Regulatory change clarifying that if a hospital stay spanned 2 midnights then it was presumed to be an inpatient stay. This change is assumed to take effect beginning in October of 2013.

The ALJ decision is estimated to increase Medicare expenditures, in part because of the cost of the additional Part B payments but also due to potential changes in how providers classify short-stay services, given the availability of Part B reimbursement should their Part A claims be denied. The Administrator ruling is assumed to further increase expenditures, since providers could re-bill Part B without the need to appeal a Part A denial. The 12-month restriction imposed by the regulation would greatly limit the circumstances in which a hospital could re-bill and thereby substantially reduce the number of questionable Part A claims, largely offsetting the higher costs arising from

³ Certain ancillary services could be billed under Part B, but not the principal service itself.

the ALJ decision and the proposed Administrator ruling. Therefore, the net impact of the ALJ decision, Administrator ruling, and the 32-month timely filing restriction is negligible.

The 2 midnight admission policy is estimated to increase Medicare expenditures due to an assumed net increase in inpatient hospital admissions resulting from a shift in cases from the outpatient setting, since providers are only required to keep a beneficiary over 2 midnights in order for the stay to be considered inpatient. In other words, it is assumed that some cases would switch from inpatient to outpatient and some from outpatient to inpatient, but the net effect is an assumed increase in inpatient hospital admissions. Several assumptions were made to estimate the financial impact of this policy change, and the key assumptions are described below.

- These impacts are based on the assumptions and projections from the President's FY 2013 Budget.
- In estimating the number of outpatient cases that would shift to the inpatient setting, claims that included spending for observation care or a major procedure were analyzed. Outpatient stays that were shorter than 2 midnights and those that were not for observation care or for a major procedure were excluded because it was assumed that these cases would be unaffected by the policy change. The number of these stays that spanned 2 or more midnights, based on the dates of service, was approximately 400,000.
- In estimating the number of inpatient stays that would shift to the outpatient setting, claims containing a surgical MS-DRG were analyzed. Claims containing medical MS-DRGs and those that resulted in death or a transfer were excluded because it was assumed that these cases would be unaffected by the policy change. The number of these stays that spanned less than 2 midnights, based on the length of stay, was approximately 360,000.
- These estimates were primarily based on FY 2011 data. However, FY 2009 and FY 2010 data were also analyzed and the results were consistent with the FY 2011 results.
- The Part B cost for services that should have been provided in the outpatient setting is assumed to be roughly 50 percent of the Part A cost when provided in the inpatient setting, and the beneficiary is responsible for 20 percent of the Part B cost. Consequently, when an inpatient admission is denied, the cost to Part B is substantially lower than the Part A cost.
- While there is a certain degree of uncertainty surrounding any cost estimate, we have determined that the methodology, data, and assumptions used are reasonable for the purpose of estimating the overall impact of the proposed 2-midnight policy. It is important to note that the assumptions used for purposes of reasonably estimating the overall impact should not be construed as absolute statements about every individual encounter. For example, not every single surgical MS-DRG spanning less than 2 midnights will shift to outpatient and not every single outpatient observation stay or major surgical encounter spanning more than 2 midnights will shift to inpatient.
- The number of short stay discharges represents about 28 percent of total discharges, and approximately 17 percent of total spending for those discharges. The assumed net increase of 40,000 discharges represents an increase of 1.2 percent in the number of short stay discharges.
- There would likely be an increase in the utilization of SNF services since a portion of the cases that shift from outpatient to inpatient could result in a SNF stay. Based on the 2011 Medicare & Medicaid Statistical Supplement, about 15 percent of 2010 inpatient stays resulted in a follow-up SNF stay, with an average length of stay of about 27 days and an estimated cost to Medicare of approximately \$11,000 per stay. Since these shifted cases don't currently have an

associated SNF stay, they are likely to be for healthier beneficiaries; therefore, it was assumed that only 10 percent of these shifted cases would result in a follow-up SNF stay. In addition, the average payment per SNF stay for these cases is assumed to be 30 percent less than the average, which is the combined effect of assumed shorter lengths of stay and lower case-mix.

The table below contains the impact on Medicare spending for both Part A and Part B, as a result of the 2 midnight policy. These changes are mainly the result of the changes in utilization of inpatient and outpatient hospital services assumed for each. The amounts are shown in millions for fiscal years 2014 through 2018.

Impact on Medicare expenditures (in millions)						
Fiscal year	Inpatient	Outpatient	SNF	Managed care	Part B premium offset	Total
2014	\$290	-\$70	\$40	\$70	\$20	\$350
2015	320	-\$80	40	70	30	380
2016	340	-\$80	50	60	30	400
2017	360	-\$90	60	60	30	420
2018	390	-\$90	60	60	30	430

Note: Totals do not necessarily equal the sum of rounded components.

A portion of this additional cost is to be offset by applying an adjustment factor to the standardized rates, as explained in the final rule for the Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers; Hospital Conditions of Participation; Payment Policies Related to Patient Status (CMS-1599-F, CMS-1455-F). The adjustment would be only for those costs related to hospital care which are represented in the table above by the sum of the inpatient and outpatient columns. This amount is \$220 million in FY 2014, which translates to a 0.2 percent reduction in the standardized amounts.

Please note the following caveats relating to these estimates. The actual costs or savings will depend substantially on possible changes in behavior by hospitals and the RACs, and such changes cannot be anticipated with certainty. While the estimates are not especially sensitive to many of the assumptions outlined above, they do depend critically on the assumed utilization changes in the inpatient and outpatient hospital settings. While we believe that these assumptions are reasonable, relatively small changes would have a disproportionate effect on the estimated net costs. For this reason, these estimates are subject to a much greater degree of uncertainty than usual, and actual results could differ significantly from these estimates. Please let us know if you have any questions about this information.

Suzanne M. Codespote, ASA
Deputy Director, Medicare and Medicaid Cost
Estimates Group

John D. Shatto, FSA
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Appendix B**List of APCs Containing Major Procedures For Purposes of the 2 Midnight Estimate**

APC—APC Description

- 0005—Level II Needle Biopsy/
Aspiration Except Bone Marrow
- 0007—Level II Incision & Drainage
- 0008—Level III Incision and Drainage
- 0012—Level I Debridement &
Destruction
- 0017—Level V Debridement &
Destruction
- 0019—Level I Excision/Biopsy
- 0020—Level II Excision/Biopsy
- 0021—Level III Excision/Biopsy
- 0022—Level IV Excision/Biopsy
- 0028—Level I Breast Surgery
- 0029—Level II Breast Surgery
- 0030—Level III Breast Surgery
- 0037—Level IV Needle Biopsy/
Aspiration Except Bone Marrow
- 0041—Arthroscopy
- 0042—Level II Arthroscopy
- 0045—Bone/Joint Manipulation Under
Anesthesia
- 0047—Arthroplasty without Prosthesis
- 0048—Level I Arthroplasty or
Implantation with Prosthesis
- 0049—Level I Musculoskeletal
Procedures Except Hand and Foot
- 0050—Level II Musculoskeletal
Procedures Except Hand and Foot
- 0051—Level III Musculoskeletal
Procedures Except Hand and Foot
- 0052—Level IV Musculoskeletal
Procedures Except Hand and Foot
- 0053—Level I Hand Musculoskeletal
Procedures
- 0054—Level II Hand Musculoskeletal
Procedures
- 0055—Level I Foot Musculoskeletal
Procedures
- 0056—Level II Foot Musculoskeletal
Procedures
- 0057—Bunion Procedures
- 0062—Level I Treatment Fracture/
Dislocation
- 0063—Level II Treatment Fracture/
Dislocation
- 0064—Level III Treatment Fracture/
Dislocation
- 0069—Thoracoscopy
- 0074—Level IV Endoscopy Upper
Airway
- 0075—Level V Endoscopy Upper
Airway
- 0076—Level I Endoscopy Lower Airway
- 0080—Diagnostic Cardiac
Catheterization
- 0082—Coronary or Non-Coronary
Atherectomy
- 0083—Coronary Angioplasty,
Valvuloplasty, and Level I
Endovascular Revascularization
- 0085—Level II Electrophysiologic
Procedures
- 0086—Level III Electrophysiologic
Procedures
- 0088—Thrombectomy
- 0089—Insertion/Replacement of
Permanent Pacemaker and Electrodes
- 0090—Level I Insertion/Replacement of
Permanent Pacemaker
- 0091—Level II Vascular Ligation
- 0092—Level I Vascular Ligation
- 0093—Vascular Reconstruction/Fistula
Repair without Device
- 0103—Miscellaneous Vascular
Procedures
- 0104—Transcatheter Placement of
Intracoronary Stents
- 0105—Repair/Revision/Removal of
Pacemakers, AICDs, or Vascular
Devices
- 0106—Insertion/Replacement of
Pacemaker Leads and/or Electrodes
- 0107—Insertion of Cardioverter-
Defibrillator Pulse Generator
- 0108—Insertion/Replacement/Repair of
Cardioverter-Defibrillator System
- 0113—Excision Lymphatic System
- 0114—Thyroid/Lymphadenectomy
Procedures
- 0115—Cannula/Access Device
Procedures
- 0121—Level I Tube or Catheter Changes
or Repositioning
- 0130—Level I Laparoscopy
- 0131—Level II Laparoscopy
- 0132—Level III Laparoscopy
- 0135—Level III Skin Repair
- 0136—Level IV Skin Repair
- 0137—Level V Skin Repair
- 0148—Level I Anal/Rectal Procedures
- 0149—Level III Anal/Rectal Procedures
- 0150—Level IV Anal/Rectal Procedures
- 0152—Level I Percutaneous Abdominal
and Biliary Procedures
- 0153—Peritoneal and Abdominal
Procedures
- 0154—Hernia/Hydrocele Procedures
- 0160—Level I Cystourethroscopy and
other Genitourinary Procedures
- 0161—Level II Cystourethroscopy and
other Genitourinary Procedures
- 0162—Level III Cystourethroscopy and
other Genitourinary Procedures
- 0163—Level IV Cystourethroscopy and
other Genitourinary Procedures
- 0166—Level I Urethral Procedures
- 0168—Level II Urethral Procedures
- 0169—Lithotripsy
- 0174—Level IV Laparoscopy
- 0181—Level II Male Genital Procedures
- 0183—Level I Male Genital Procedures
- 0184—Prostate Biopsy
- 0190—Level I Hysteroscopy
- 0192—Level IV Female Reproductive
Proc
- 0193—Level V Female Reproductive
Proc
- 0195—Level VI Female Reproductive
Procedures
- 0202—Level VII Female Reproductive
Procedures
- 0208—Laminotomies and
Laminectomies
- 0220—Level I Nerve Procedures
- 0221—Level II Nerve Procedures
- 0224—Implantation of Catheter/
Reservoir/Shunt
- 0227—Implantation of Drug Infusion
Device
- 0229—Level II Endovascular
Revascularization of the Lower
Extremity
- 0233—Level III Anterior Segment Eye
Procedures
- 0234—Level IV Anterior Segment Eye
Procedures
- 0237—Level II Posterior Segment Eye
Procedures
- 0238—Level I Repair and Plastic Eye
Procedures
- 0239—Level II Repair and Plastic Eye
Procedures
- 0240—Level III Repair and Plastic Eye
Procedures
- 0241—Level IV Repair and Plastic Eye
Procedures
- 0242—Level V Repair and Plastic Eye
Procedures
- 0243—Strabismus/Muscle Procedures
- 0244—Corneal and Amniotic Membrane
Transplant
- 0246—Cataract Procedures with IOL
Insert
- 0249—Cataract Procedures without IOL
Insert
- 0252—Level III ENT Procedures
- 0253—Level IV ENT Procedures
- 0254—Level V ENT Procedures
- 0255—Level II Anterior Segment Eye
Procedures
- 0256—Level VI ENT Procedures
- 0259—Level VII ENT Procedures
- 0293—Level VI Anterior Segment Eye
Procedures
- 0319—Level III Endovascular
Revascularization of the Lower
Extremity
- 0384—GI Procedures with Stents
- 0387—Level II Hysteroscopy
- 0415—Level II Endoscopy Lower
Airway
- 0419—Level II Upper GI Procedures
- 0422—Level III Upper GI Procedures
- 0423—Level II Percutaneous Abdominal
and Biliary Procedures
- 0425—Level II Arthroplasty or
Implantation with Prosthesis
- 0427—Level II Tube or Catheter
Changes or Repositioning
- 0428—Level III Sigmoidoscopy and
Anoscopy
- 0429—Level V Cystourethroscopy and
other Genitourinary Procedures
- 0434—Cardiac Defect Repair
- 0648—Level IV Breast Surgery
- 0651—Complex Interstitial Radiation
Source Application
- 0653—Vascular Reconstruction/Fistula
Repair with Device
- 0654—Level II Insertion/Replacement of
Permanent Pacemaker
- 0655—Insertion/Replacement/
Conversion of a Permanent Dual
Chamber Pacemaker or Pacing

0656—Transcatheter Placement of Intracoronary Drug-Eluting Stents
 0672—Level III Posterior Segment Eye Procedures
 0673—Level V Anterior Segment Eye Procedures
 0674—Prostate Cryoablation
 0687—Revision/Removal of Neurostimulator Electrodes
 0688—Revision/Removal of Neurostimulator Pulse Generator Receiver

Appendix C

Discussion of the Outpatient Data

This Appendix provides additional detail on how we identified outpatient claims for observation services or a major procedure spanning 2 midnights or more for purposes of estimating the shift in outpatient cases.

The comprehensive APC analysis that also formed the basis for the 2 midnight analysis was performed using 2011 OPPS claims of bill type 13x extracted from the Standard Analytic File processed through December 31, 2011 with service line charges converted to costs per the usual OPPS cost modeling logic. (A description of the cost modeling logic can be found in the claims accounting document for each year of OPPS rulemaking and is available on our Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Hospital-Outpatient-Regulations-and-Notices.html>.) Similar conclusions regarding the –0.2 percent estimate can be drawn by analyzing the OPPS Limited Data Set rather than the Standard Analytic File. The CMS Web site at <https://www.cms.gov/research-statistics-data-and-systems/files-for-order/limiteddatasets/HospitalOPPS.html> provides information about ordering the OPPS Limited Data Set containing the outpatient hospital data. In order to facilitate a claims analysis using the claim from date and the claim through date a new field has been added to the OPPS Limited Data Set.

Hospital OP claims do not readily distinguish between claims based on services provided while the beneficiary physically stayed at the hospital and claims where the beneficiary received recurring services on successive days while leaving the hospital between services. Since only continuous stays apply for this analysis, certain assumptions had to be made to indirectly estimate the body of claims for continuous stays. Claims were trimmed to only those whose full span of coverage (the difference of claim-through-date and claim-from-date) was less than 7 days. Claims with longer than a 7 day span were excluded as unlikely to represent continuous overnight stays. Claims were then subset to those containing observation services or a significant procedure, as observation services are reported differently in those two subgroups. To further remove recurring services during this subsetting, claims that did not fall into one of the following were removed from the analysis:

- Claims containing G0378 (“Hospital observation per hr”) and a medical visit procedure code (status indicator of “V”);

- Claims containing G0379 (“Direct refer hospital observ”), considered to be “medical claims.”

- Claims containing a significant OPPS procedure code (status indicator of “S” or “T”) that received Medicare payment, considered to be “surgical claims.”

Next, the highest cost coded services on non-observation claims (those without G0379 or without G0378 and a medical visit procedure) were identified. Non-observation claims where the highest cost procedure was not a C-code (Temporary Hospital Outpatient PPS), a J-code (non-orally administered medication and chemotherapy drugs), a significant OPPS procedure code (status indicator of “S” or “T”), or a medical visit procedure code (status indicator of “V”) were removed from the analysis. This removed non-observation claims where the highest cost service was not typical for a claim associated with a major procedure.

Following these steps, a principal procedure representing the primary service driving the claim’s overall utilization was identified for each remaining claim. For observation claims containing both G0379 and G0378 with a medical visit procedure, the principal procedure was identified as G0379 or G0378 depending on which code reports a higher line-item cost. Otherwise, observation claims were assigned a principal procedure of G0379 and G0378 depending on whether G0379 or G0378 with a medical visit procedure were respectively reported.

For non-observation claims, the principal procedure was identified as the claim’s significant OPPS procedure code (status indicator of “S” or “T”) with the highest line-item cost. Non-observation claims where the earliest service date of the principal procedure occurred more than 5 days before or on the same date as the claim-through-date were removed from the analysis, as these were assumed to represent recurring services. Additionally, non-observation claims were trimmed to those where the principal procedure occurs on only a single service date, thus removing any claim that contains major recurring services and ensuring that the stay is initiated with a single instance of the major procedure.

To remove aberrant claims, each claim’s non-observation total claim cost was then calculated by summing the line-item costs for all coded services and all OPPS packaged revenue centers on the claim. Each claim’s span of coverage was also calculated as the number of days between the provision of the principal service and the claim’s through-date. The geometric mean cost was calculated for each observation or non-observation principal procedure using the claims’ total cost, and those claims with unreasonable costs (That is, claim costs above 100 times or below 1 percent of the principal procedure geometric mean cost) were trimmed from the analysis.

For purposes of the 2 midnight analysis, we then further subset the data to APCs having a status indicator of “T” in order to remove services which were not relevant for the 2 midnight analysis that is, to remove those services that were more likely to represent diagnostic services or minor procedures interjected into a series of

recurring services, and were less likely to trigger a “surgical” episode in which a continuous stay followed the procedure. For similar reasons, our medical officers also removed some of the remaining APCs based on clinical judgment that those services were unlikely to be indicative of a continuous protracted hospital stay. The full list of OPPS status indicators and their definitions is published in the OPPS/ASC proposed and final rules each year, available on our Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Hospital-Outpatient-Regulations-and-Notices.html>. The final list of major procedure APCs used in the development of the –0.2 percent estimate can be found in Appendix B.

As described in section II.D of this notice, we have also been performing an analysis of the claims experience since the implementation of the 2-midnight policy. This analysis has used claims data from the OPPS Limited Data Set. We have also been examining similar data from our Integrated Data Repository (see <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/IDR/> for a description of the IDR). For the purpose of this analysis, we have used the following claim selection criteria: the third position of the provider number group was equal to “0” (short-term hospital) and the first 2 positions of the provider number were not equal to “21” (excludes Maryland hospitals.)

We seek comment on the appropriate outpatient data source to use for the –0.2 percent estimate and any data trims and claims selection criteria that we should apply to the data.

Appendix D

Discussion of the Inpatient Data

This Appendix provides additional detail on how we identified inpatient stays spanning less than 2 midnights for surgical MS–DRGs for purposes of estimating the shift in inpatient cases.

The inpatient data used in the original –0.2 estimate was based on data from the CMS Integrated Data Repository (IDR) (see <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/IDR/> for a description of the IDR). The CMS Web site at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/LimitedDataSets/> provides information about ordering the “MedPAR Limited Data Set (LDS)-Hospital (National)” containing the publicly available inpatient hospital data. At the time the original –0.2 percent estimate was developed, we believed similar conclusions regarding the –0.2 percent estimate could be drawn using either the IDR or the publicly available inpatient data files. However, we did not verify this at the time.

When we now compare the number of inpatient stays less than 2 midnights for surgical MS–DRGs (excluding deaths and transfers) from the FY 2011 IDR data available to us at the time of the original –0.2 estimate (claims processed through June of 2013) to the number from the FY 2011 MedPAR data (claims processed through March of 2013), we get

approximately 360,000 stays from the IDR data and approximately 380,000 stays from the MedPAR data. Further complicating a current analysis relative to the analysis performed at that time, when we examine the FY 2011 IDR data available to us now (claims processed through October 2015) compared to when the original – 0.2 percent estimate was developed (claims processed through June 2013), we get approximately 340,000 stays instead of the originally estimated 360,000 stays, which we suspect is at least partly driven by subsequent claim denials for these cases that have occurred since the data was examined for the original – 0.2 percent estimate. Because the historical MedPAR data for a given fiscal year is not generally refreshed after it is created, unlike the IDR which is refreshed, there is no analogous number to the 340,000 for the FY 2011 MedPAR.

In determining the 380,000 number from the FY 2011 MedPAR, the following inpatient claim selection criteria and data trims were applied to the data. We selected FY 2011 MedPAR claims based on a FY 2011 date of discharge where the National Claims History (NCH) claim type code was equal to “60” (inpatient hospital), the third position of the provider number group was equal to “0” (short-term hospital), the first 2 positions of the provider number were not equal to “21” (excludes Maryland hospitals), the destination discharge code was not equal to “30” (excludes still a patient), the special unit code was blank (excludes, for example, PPS exempt units), the GHO paid code was not equal to “1” (a group health organization has not paid the provider), the total charge amount was greater than 0, and the IME amount was not equal to the DRG price amount (indicating it was not a managed care claim).

As described in section II.D of this notice, we have also been performing an analysis of the claims experience since the implementation of the 2-midnight policy. This analysis has used data from the publicly available MedPAR file and the IDR.

We seek comment on the appropriate inpatient data source to use for the – 0.2 percent estimate and any data trims and claims selection criteria that we should apply to the data.

[FR Doc. 2015–30486 Filed 11–30–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Building Bridges and Bonds (B3) Study: Data Collection.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), Office of Planning, Research and Evaluation (OPRE) proposes to collect information as part of the Building Bridges and Bonds (B3) study. B3 will inform policymakers, program operators, and stakeholders about effective ways for fatherhood programs to support fathers in their parenting and employment. In particular, partnering with programs that serve low-income fathers to promote responsible fatherhood, the B3 study will examine the effectiveness of strategies used to (1) engage fathers in program activities, (2) develop and support parenting and co-parenting skills, and (3) advance the employment of disadvantaged fathers. B3 will test innovative, evidence-informed approaches that will be added to the core components of fatherhood programs and will reflect the most recent developments in behavioral science, adult skill-building, child development, and other relevant disciplines. The study will include up to six sites and specific interventions will vary by site.

B3 includes an impact evaluation and a process study. The impact evaluation will involve randomly assigning individuals to a treatment or comparison condition and comparing key outcomes. In addition, the study will collect information on employment, criminal justice and child support outcomes from administrative records. These data will be used to estimate the effects of the parenting or employment intervention on a range of outcomes including employment; earnings; child support; father/child contact, shared activities, and relationship quality; father's commitment to his child, parenting skills, and parenting efficacy; co-parenting relationship quality; and criminal justice outcomes.

The process study will describe and document each newly established intervention and how it operated to provide insight into the treatment differentials and the context for interpreting findings of the impact study. The process study will also highlight lessons to the field including what it takes to engage participants, the challenges sites face when implementing the parenting or employment intervention, and the participants' perspectives on whether

the program components offered met their needs.

Data collection instruments for the B3 study include the following: (1) Screening for program eligibility to help ensure that only eligible fathers enroll in the study.

(2) nFORM management information system (MIS) to record study and participation information. Note: Only B3-specific burden is included with this request. All Responsible Fatherhood Grantees (funded by the ACF Office of Family Assistance) are required to use nFORM. nFORM is being developed by the Fatherhood and Marriage Local Evaluation and Cross-site (FaMLE Cross-site) Project and burden for these sites are captured under OMB #0970–0460. (3) Applicant characteristics and program operations data for one non-grantee site. We expect most of the B3 sites will be federally funded Responsible Fatherhood grantees, but it is possible that one site will not and therefore, this request includes burden for one site to use nFORM. (4) Baseline and follow-up surveys for the impact study. There will be two versions of each survey, specific to the intervention tested. (5) Baseline and follow-up questionnaires, interviews, focus groups, and surveys to inform the process study; these will also be specific to the intervention tested.

The sites that are part of the B3 study will use a slightly modified version of nFORM that includes B–3 specific information, such as: (1) B3-specific enrollment data (2) B3-specific information about focal child and co-parent in sites testing a parenting intervention, and (3) B3 tracking of child and co-parent attendance in services with the father for program group members in sites testing a parenting intervention.

RESPONDENTS: Fathers seeking services from one of the six Responsible Fatherhood Programs in the B3 study and staff members working at the B3 sites.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Instruments for Recruitment and Screening					
Screening questions for parenting intervention (applicant burden)	4,000	1,333	1	0.03	44
Screening questions for parenting intervention (staff burden)	48	16	83	0.03	44
Screening questions for employment intervention (applicant burden)	2,000	667	1	0.17	111
Screening questions for employment intervention (staff burden)	24	8	83	0.17	111
Consent/Assent Materials for Fathers (applicant burden) ...	2,500	833	1	0.17	139
Consent/Assent Materials for Fathers (staff burden)	72	24	35	0.17	139
Consent Materials for Parents of Fathers under 18 (applicant burden)	833	278	1	0.17	46
Consent Materials for Parents of Fathers under 18 (staff burden)	72	24	12	0.17	46
Recruitment script for parenting intervention (applicant burden)	1,500	500	1	0.08	42
Recruitment script for parenting intervention (staff burden)	48	16	31	0.08	42
Recruitment script for employment intervention (applicant burden)	1,000	333	1	0.08	28
Recruitment script for employment intervention (staff burden)	24	8	42	0.08	28
Instruments for Impact Study					
B3-specific enrollment data collected in the nFORM MIS from all sample members (applicant burden)	2,500	833	1	0.12	97
B3-specific enrollment data collected in the nFORM MIS from all sample members (staff burden)	72	24	35	0.12	97
B3-specific information collected about focal child and co-parent in the nFORM MIS from program group members in sites testing parenting intervention (applicant burden)	750	250	1	0.17	42
B3-specific information collected about focal child and co-parent in the nFORM MIS from program group members in sites testing parenting intervention (staff burden)	48	16	16	0.17	42
B3 tracking of child and co-parent attendance in services with the father for program group members in sites testing parenting intervention (staff burden)	48	16	156	0.01	21
Additional nFORM burden for non-Grantee site (applicant burden)	600	200	1	0.25	50
Additional nFORM burden for non-Grantee site (staff burden)	12	4	2,625	0.03	363
Baseline survey for sites testing parenting intervention	1,500	500	1	0.67	333
Baseline survey for sites testing employment intervention	1,000	333	1	0.67	222
6 month follow-up survey for sites testing parenting intervention	1,200	400	1	0.67	267
6 month follow-up survey for sites testing employment intervention	800	267	1	0.67	178
Instruments for Process Study					
In-program participant questionnaire for program and control group members in sites testing parenting intervention	1,500	500	1	0.5	250
In-program participant questionnaire for program and control group members in sites testing employment intervention	1,000	333	1	0.5	167
Staff baseline questionnaire for sites testing parenting intervention	208	69	1	0.5	35
Staff baseline questionnaire for sites testing employment intervention	104	35	1	0.5	17
Staff and management semi-structured interviews for sites testing parenting intervention	160	53	2	1.5	160
Staff and management semi-structured interviews for sites testing employment intervention	80	27	2	1.5	80
Staff follow-up questionnaire for sites testing parenting intervention	160	53	1	1.0	53

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Staff follow-up questionnaire for sites testing employment intervention	80	27	1	1.0	27
Participant focus groups	96	32	1	1.5	48
Mother focus groups in sites testing parenting intervention	80	27	1	1.0	27
Mobile device process survey	2,000	667	5	0.08	278
Mobile device employment survey	400	133	5	0.08	56
Mobile device parenting and co-parenting survey	600	200	5	0.08	83
Post-workshop questionnaires for sites testing parenting intervention	750	250	5	0.05	63

Estimated Total Annual Burden Hours: 3,876.

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, 330 C Street SW., Washington, DC 20201, 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.

Robert Sargis,

ACF Reports Clearance Officer.

[FR Doc. 2015–30337 Filed 11–30–15; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0155]

Veterinary Feed Directive Common Format Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry #233 entitled “Veterinary Feed Directive Common Format Questions and Answers.” On June 3, 2015, FDA published a final rule that revised the Agency’s veterinary feed directive (VFD) regulations. During the rulemaking process, FDA received a few comments requesting that we require a uniform VFD form. Although we declined this request because we think that requiring a specific VFD form would be too prescriptive, we acknowledge that a common VFD format would help clients, veterinarians, and distributors (including feed mills) quickly identify relevant information on the VFD and are issuing this draft guidance to recommend a common VFD format.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 1, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2010–N–0155 for “Veterinary Feed Directive Common Format Questions and Answers.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at

<http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper 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.

Submit written requests for single copies of the draft guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dragan Momcilovic, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish

Pl., Rockville, MD 20855, 240–402–5944, dragan.momcilovic@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #233 entitled “Veterinary Feed Directive Common Format Questions and Answers.”

In 1996, Congress enacted the Animal Drug Availability Act (ADAA) to facilitate the approval and marketing of new animal drugs and medicated feeds. In passing the ADAA, Congress created a new regulatory category for certain animal drugs used in or on animal feed called VFD drugs. VFD drugs are new animal drugs intended for use in or on animal feed which are limited to use under the professional supervision of a licensed veterinarian. FDA published final regulations at § 558.6 (21 CFR 558.6) implementing the VFD-related provisions of the ADAA in 2000. On June 3, 2015 (80 FR 31707), FDA published a VFD final rule that revised those VFD regulations and introduced clarifying changes to specified definitions.

During the latest rulemaking process, FDA received a few comments requesting the Agency to require a uniform VFD format. We declined this request because we thought that requiring a specific format would be too prescriptive. However, we acknowledge that a common VFD format would help clients, veterinarians, and distributors (including feed mills) quickly identify relevant information on the VFD.

We are issuing this draft guidance to recommend a common VFD format. In the draft guidance, we use the term “VFD” to refer to the form used to convey the VFD order. This draft guidance describes the requirements in § 514.1(b)(9) (21 CFR 514.1(b)(9)) for sponsor submission of a VFD to FDA as part of the application process for approval of a new animal drug for use in or on animal feed as a VFD drug, as well as the required and optional information to be included on the VFD. This draft guidance provides examples that illustrate how a common VFD format might appear and how some of the information on the VFD may be prepopulated by a sponsor.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Veterinary Feed Directive Common Format Questions and Answers.” It does not establish any

rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 514.1 have been approved under OMB control number 0910–0032. The collections of information in § 558.6 have been approved under OMB control number 0910–0363.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm> or <http://www.regulations.gov>.

Dated: November 25, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–30411 Filed 11–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: NIH Information Collection Forms To Support Genomic Data Sharing for Research Purposes (OD)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) The quality, utility, and clarity of the information to be collected; and (4) Minimization of the burden of the collection of information from those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dina N. Paltoo, Ph.D., MPH, Director, Genetics, Health, and Society Program, Office of Clinical Research and Bioethics Policy, Office of Science Policy, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892 or call non-toll-free number 301-496-9838 or Email your request, including your address to: GDS@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: National Institutes of Health Information Collection Forms to Support Genomic Data Sharing for Research Purposes—0925-0670—Expiration Date 03/31/2016—Revision—Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Sharing research data supports the NIH mission and is essential to facilitate the translation of

research results into knowledge, products, and procedures that improve human health. The NIH has longstanding policies to make a broad range of research data, including genomic data, publicly available in a timely manner from the research activities that it funds. Genomic research data sharing is an integral element of the NIH mission as it facilitates advances in our understanding of factors that influence health and disease, while also providing opportunities to accelerate research through the power of combining large and information-rich datasets. To promote robust sharing of human and non-human data from a wide range of large-scale genomic research and provide appropriate protections for research involving human data, the National Institutes of Health (NIH) issued the NIH Genomic Data Sharing Policy (GDS Policy). Human genomic data submissions and controlled-access are managed through a central data repository, the database of Genotypes and Phenotypes (dbGaP) which is administered by the National Center for Biotechnology Information (NCBI), part of the National Library of Medicine at NIH.

Under the GDS Policy, all investigators who receive NIH funding to conduct large-scale genomic research are expected to register studies with human genomic data in dbGaP, no matter which NIH-designated data repository will maintain the data. As part of the registration process, investigators must provide basic study information such as the type of data that will be submitted to dbGaP, a description of the study, and an institutional assurance (*i.e.* Institutional

Certification) of the data submission which delineates any limitations on the secondary use of the data (*e.g.*, data cannot be shared with for-profit companies, data can be used only for research of particular diseases).

Investigators interested in using controlled-access data for secondary research must apply through dbGaP and be granted permission from the relevant NIH Data Access Committee(s). As part of the application process, investigators and their institutions must provide information such as a description of the proposed research use of controlled-access datasets that conforms to any data use limitations, agree to the Genomic Data User Code of Conduct, and agree to the terms of access through a Data Use Certification agreement. Requests to renew data access and reports to close out data use are similar to the initial data access request, requiring sign-off by both the requestor and the institution, but also ask for information about how the data have been used, and about publications, presentations, or intellectual property based on the research conducted with the accessed data as well as any data security issues or other data management incidents.

The NIH has developed online forms, available through dbGaP, in an effort to reduce the burden for researchers and their institutional officials to complete the study registration, data submission, data access, and renewal and closeout processes.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,505.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of form	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Study Registration and Data Submission				
Investigator Submitting Data	150	1	1	150
Institutional Official to Certify	150	1	30/60	75
Initial Data Access Request				
Investigator Requesting Data	633	2	45/60	950
Signing Official to Certify	633	2	30/60	633
Renewal and Close-out of Data Access				
Investigator Requesting Data	633	2	15/60	317
Signing Official to Certify	633	2	18/60	380

Dated: November 23, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–30465 Filed 11–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings 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: Center for Scientific Review Special Emphasis Panel; Member Conflicts and Continuous Submissions.

Date: December 3, 2015.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chee Lim, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, limc4@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: December 9, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lawrence E Boerboom, Ph.D., Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, boerboom@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: December 9–10, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, hamannkj@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuropharmacology and Channels.

Date: December 11, 2015.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, custerm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship Review.

Date: December 11, 2015.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Raj K Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, kkrishna@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 24, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–30351 Filed 11–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at <http://www.samhsa.gov/workplace>.

FOR FURTHER INFORMATION CONTACT:

Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. The “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen

validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare
6628 50th Street NW
Edmonton, AB Canada T6B 2N7
780-784-1190
(Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc.
160 Elmgrove Park
Rochester, NY 14624
585-429-2264

Aegis Analytical Laboratories, Inc.
345 Hill Ave.
Nashville, TN 37210
615-255-2400
(Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services
1111 Newton St.
Gretna, LA 70053
504-361-8989/800-433-3823
(Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services
450 Southlake Blvd.
Richmond, VA 23236
804-378-9130
(Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory
11401 I-30
Little Rock, AR 72209-7056
501-202-2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab
8433 Quivira Road
Lenexa, KS 66215-2802
800-445-6917

DrugScan, Inc.
200 Precision Road, Suite 200
Horsham, PA 19044
800-235-4890

Dynacare*
245 Pall Mall Street
London, ONT, Canada N6A 1P4
519-679-1630
(Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc.
5 Industrial Park Drive
Oxford, MS 38655
662-236-2609

Fortes Laboratories, Inc.
25749 SW Canyon Creek Road, Suite 600
Wilsonville, OR 97070
503-486-1023

Laboratory Corporation of America Holdings
7207 N. Gessner Road
Houston, TX 77040
713-856-8288/800-800-2387

Laboratory Corporation of America Holdings
69 First Ave.
Raritan, NJ 08869
908-526-2400/800-437-4986
(Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings
1904 Alexander Drive
Research Triangle Park, NC 27709
919-572-6900/800-833-3984
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings
1120 Main Street
Southaven, MS 38671
866-827-8042/800-233-6339
(Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics
10101 Renner Blvd.
Lenexa, KS 66219
913-888-3927/800-873-8845
(Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc.
402 W. County Road D
St. Paul, MN 55112
651-636-7466/800-832-3244

MetroLab-Legacy Laboratory Services
1225 NE 2nd Ave.
Portland, OR 97232
503-413-5295/800-950-5295

Minneapolis Veterans Affairs Medical Center

Forensic Toxicology Laboratory
1 Veterans Drive
Minneapolis, MN 55417
612-725-2088

Testing for Veterans Affairs (VA) Employees Only

National Toxicology Laboratories, Inc.
1100 California Ave.
Bakersfield, CA 93304
661-322-4250/800-350-3515

One Source Toxicology Laboratory, Inc.
1213 Genoa-Red Bluff
Pasadena, TX 77504
888-747-3774

(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories
9348 DeSoto Ave.
Chatsworth, CA 91311
800-328-6942

(Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories
110 West Cliff Dr.
Spokane, WA 99204
509-755-8991/800-541-7891x7

Phamatech, Inc.
15175 Innovation Drive
San Diego, CA 92128
888-635-5840

Quest Diagnostics Incorporated
1777 Montreal Circle
Tucker, GA 30084
800-729-6432
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
400 Egypt Road
Norristown, PA 19403
610-631-4600/877-642-2216
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
8401 Fallbrook Ave.
West Hills, CA 91304
818-737-6370
(Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory
3700650 Westwind Blvd.
Santa Rosa, CA 95403
800-255-2159

Southwest Laboratories
4625 E. Cotton Center Boulevard
Suite 177

Phoenix, AZ 85040
602-438-8507/800-279-0027
STERLING Reference Laboratories
2617 East L Street
Tacoma, Washington 98421
800-442-0438
US Army Forensic Toxicology Drug
Testing Laboratory
2490 Wilson St.
Fort George G. Meade, MD 20755-5235
301-677-7085
Testing for Department of Defense (DoD)
Employees Only

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Summer King,
Statistician.

[FR Doc. 2015-30433 Filed 11-30-15; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4244-DR; Docket ID FEMA-2015-0002]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA-4244-DR), dated October 30, 2015, and related determinations.

DATES: *Effective Date:* October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 30, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from a severe storm on August 27, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

The North Slope Borough for Public Assistance.

All areas within the State of Alaska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015-30352 Filed 11-30-15; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4241-DR; Docket ID FEMA-2015-0002]

South Carolina; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA-4241-DR), dated October 5, 2015, and related determinations.

DATES: *Effective Date:* November 5, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 5, 2015.

Spartanburg County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–30353 Filed 11–30–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4240–DR; Docket ID FEMA–2015–0002]

California; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4240–DR), dated September 22, 2015, and related determinations.

DATES: *Effective Date:* October 30, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 30, 2015.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–30350 Filed 11–30–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4242–DR; Docket ID FEMA–2015–0002]

Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4242–DR), dated October 15, 2015, and related determinations.

DATES: *Effective Date:* October 29, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 15, 2015.

Clallam, Grays Harbor, and Whatcom Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–30354 Filed 11–30–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2015–N224; FGES111309WLLF0–156]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Wolf-Livestock Demonstration Project Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2015. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before December 31, 2015.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *hope_grey@fws.gov* (email). Please include “1018–0154” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–0154.
Title: Wolf-Livestock Demonstration Project Grant Program.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: States and Indian tribes.

Obligation to Respond: Required to obtain or retain a benefit.

Estimated Number of Annual Respondents: 10.

Frequency of Collection: On occasion for applications, annually for reports, and ongoing for recordkeeping.

Estimated Number of Responses and Annual Burden Hours:

Activity	Number of responses	Completion time per response	Total annual burden hours
Applications	22	8 hours	176
Reports and Recordkeeping	20	14 hours	280
TOTALS	42	.....	456

Estimated Annual Nonhour Burden Cost: None.

Abstract: Subtitle C of Title VI of the Omnibus Public Land Management Act of 2009 (Act; Pub. L. 111–11) authorizes the Secretary of the Interior and the Secretary of Agriculture to develop a Wolf-Livestock Demonstration Project Grant Program (WLDPGP) to:

- Assist livestock producers in undertaking proactive, nonlethal activities to reduce the risk of livestock loss due to predation by wolves; and
- Compensate livestock producers for livestock losses due to such predation.

The Act directs that the program be established as a grant program to provide funding to States and tribes, that the Federal cost share not exceed 50 percent, and that funds be expended equally between the two purposes. The Act included an authorization of appropriations up to \$1 million each fiscal year for 5 years. The U.S. Fish and Wildlife Service Ecological Services Program will allocate the funding in the form of competitively awarded grants to States and tribes with a prior history of wolf depredation. States with delisted wolf populations are eligible for funding, provided that they meet the eligibility criteria contained in Pub. L. 111–11.

The following additional criteria apply to all WLDPGP grants and must be satisfied for a project to receive WLDPGP funding:

- Proposal cannot include U.S. Fish and Wildlife Service full-time equivalent (FTE) costs.
- Proposal cannot seek funding for projects that serve to satisfy regulatory requirements of the Endangered Species Act (ESA), including complying with a biological opinion under section 7 or fulfilling commitments of a habitat conservation plan (HCP) under ESA section 10, or for projects that serve to satisfy other Federal regulatory requirements (e.g., mitigation for Federal permits).
- State administrative costs must be assumed by the State or included in the proposal in accordance with Federal requirements.

We will publish notices of funding opportunity on the Grants.gov Web site at <http://www.grants.gov>, as well as in the Catalog of Federal Domestic Assistance at <http://cfda.gov>. This information collection includes both grant applications and reporting/recordkeeping requirements. To compete for grant funds, eligible States and tribes must submit an application that describes in substantial detail project locations, project resources, future benefits, and other characteristics that meet the Wolf-Livestock Demonstration Project Grant Program purposes as listed above. In accordance with the Act, States and tribes that receive a grant must:

- Maintain files of all claims received under programs funded by the grant, including supporting documentation; and
- Submit an annual report that includes a summary of claims and expenditures under the program during the year and a description of any action taken on the claims.

Comments Received and Our Responses

On August 18, 2015, we published in the **Federal Register** (80 FR 50024) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on October 19, 2015. We received two comments. One commenter expressed opinions about WLDPGP funding and wolf management in general, but did not address the information collection requirements. The second commenter described the program as an excellent source of dedicated funds for preventative strategies to reduce wolf-livestock conflict, but expressed frustration with the accessibility of annual reports. The Service's Regional Offices are responsible for monitoring the grant projects and maintaining the administrative record of WLDPGP grants. In the future, we commit to ensuring that all annual reports are filed in the appropriate Regional Offices and made readily available upon request. No changes were made to the information

collection requirements as a result of these comments.

Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB and us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 25, 2015.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2015–30431 Filed 11–30–15; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–FHC–2015–N213;
FVHC98210408710–XXX–FF04G01000]

Deepwater Horizon Oil Spill; Draft Phase V Early Restoration Plan and Environmental Assessment

AGENCY: Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and the Framework Agreement for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill, the Federal and State natural resource trustee agencies (Trustees) have prepared a Draft Phase V Early Restoration Plan and Environmental Assessment (Draft Phase

V ERP/EA) describing and proposing the first phase of the Florida Coastal Access Project. This early restoration project is intended to continue the process of restoring natural resources and services injured or lost as a result of the *Deepwater Horizon* oil spill, which occurred on or about April 20, 2010, in the Gulf of Mexico. The Draft Phase V ERP/EA also includes notices of change and supporting analysis for two Phase

III Early Restoration Projects: “Strategically Provided Boat Access Along Florida’s Gulf Coast—City of Port St. Joe, Frank Pate Boat Ramp Improvements” and “Florida Artificial Reef Creation and Restoration.”

DATES: *Comments Due Date:* We will consider public comments received on or before December 31, 2015.

PUBLIC MEETING DATE

Date	Time	Location
December 14, 2015	6:00 p.m. Open house 6:30 p.m. Public meeting	Gulf Coast State College, Student Union East, Room 231 (Gibson Lecture Hall), 5230 West U.S. Highway 98, Panama City, FL 32411.

ADDRESSES:

Obtaining Documents: You may download the Draft Phase V ERP/EA by one of following methods:

- Via the Web: <http://www.gulfspillrestoration.noaa.gov> or <http://www.doi.gov/deepwaterhorizon>.

You may also view the document at any of the public facilities listed at <http://www.gulfspillrestoration.noaa.gov>.

- Via U.S. mail, you may request a CD of the Draft Phase V ERP/EA (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Comments: You may submit comments on the Draft Phase V ERP/EA by one of following methods:

- Via the Web: <http://www.gulfspillrestoration.noaa.gov>.

• Via U.S. Mail: U.S. Fish and

Wildlife Service, P.O. Box 49567,

Atlanta, GA 30345.

Public Meeting Location: Gulf Coast State College, Student Union East, Room 231 (Gibson Lecture Hall), 5230 West U.S. Highway 98, Panama City, FL 32411.

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, at 404–679–4161.

SUPPLEMENTARY INFORMATION:

Introduction

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon*, which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252—MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest off shore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were

applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

Under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*), designated Federal and State agencies may act as trustees on behalf of the public to assess natural resource injuries and losses resulting from an oil spill and to determine the restoration actions needed to compensate the public for those injuries and losses. OPA instructs the trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete. For the *Deepwater Horizon* oil spill, designated trustees (Trustees) in four Federal agencies and all five Gulf States—Alabama, Florida, Louisiana, Mississippi, and Texas—have been working together to assess natural resource injuries and prepare a series of restoration plans described below.

The Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (USEPA);
- State of Louisiana Coastal Protection and Restoration Authority,

Oil Spill Coordinator’s Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;

- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

Background

In the April 2011 Framework Agreement for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill (Framework Agreement), BP agreed to provide to the Trustees up to \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the *Deepwater Horizon* oil spill. The Framework Agreement represents a preliminary step toward the restoration of injured natural resources and is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The Framework Agreement provides a mechanism through which the Trustees and BP can work together “to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable” prior to the resolution of the Trustees’ natural resource damages claim. Early restoration is not intended to and does not fully address all injuries caused by the *Deepwater Horizon* oil spill. Restoration beyond early restoration projects will be required to

fully compensate the public for natural resource losses, including recreational use losses, from the *Deepwater Horizon* oil spill.

This Notice addresses Phase V of the early restoration process. In four previous phases, the Trustees selected, and BP agreed to fund, a total of 64 early restoration projects expected to cost a total of approximately \$832 million. The Trustees selected these projects after public notice, public meetings, and consideration of public comments, through the Phase I Early Restoration Plan/Environmental Assessment (Phase I ERP/EA), Phase II Early Restoration Plan/Environmental Review (Phase II ERP/ER), the Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement (Phase III ERP/PEIS), and the Phase IV Early Restoration Plan/Environment Assessments (Phase IV ERP/EA).

The Trustees released the Phase I ERP/EA on April 20, 2012 (77 FR 23741) and the Phase II ERP/ER on February 5, 2013 (78 FR 8184). The Trustees released the Phase III ERP/PEIS on June 26, 2014 (79 FR 36328), and subsequently approved that Plan and programmatic EIS in a Record of Decision on October 31, 2014 (79 FR 64831). The Trustees released the Phase IV ERP/EA on September 23, 2015 (80 FR 57384). These plans are available at: <https://www.doi.gov/deepwaterhorizon/adminrecord>.

In the Draft Phase V Early Restoration Plan and Environmental Assessment announced in this Notice, the Trustees are proposing the first phase of the Florida Coastal Access Project to address lost recreational opportunities in Florida caused by the *Deepwater Horizon* oil spill. The proposed first phase of the Florida Coastal Access Project is consistent with the Programmatic ERP and PEIS included in the Final Phase III ERP/PEIS previously developed by the Trustees. The Draft Phase V ERP/EA is not intended to and does not fully address all injuries caused by the spill or provide the extent of restoration needed to make the public and the environment whole.

Overview of the Draft Phase V ERP/EA

The Draft Phase V ERP/EA is being released in accordance with the Oil Pollution Act (OPA), the Natural Resources Damage Assessment (NRDA) regulations found in the Code of Federal Regulations (CFR) at 15 CFR 990, the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill.

The Trustees are considering the first phase of the Florida Coastal Access Project in the Draft Phase V ERP/EA. The total estimated cost for the proposed first phase of the Florida Coastal Access Project is \$34,372,184. The total estimated cost of the proposed Florida Coastal Access Project is \$45,415,573. The Trustees will propose in an additional future phase similar restoration activities that would utilize the remaining \$11,043,389, if approved. Details on the proposed first phase of the Florida Coastal Access Project are provided in the Draft Phase V ERP/EA.

The proposed first phase of the Florida Coastal Access Project is intended to continue the process of using early restoration funding to restore natural resources, ecological services, and recreational use services injured or lost as a result of the *Deepwater Horizon* oil spill. The Trustees considered hundreds of projects leading to the identification of the Florida Coastal Access Project and considered both ecological and recreational use restoration projects to restore injuries caused by the *Deepwater Horizon* oil spill, addressing both the physical and biological environment, as well as the relationship people have with the environment.

The Draft Phase V ERP/EA also includes notices of change and supporting analysis for two Phase III Early Restoration Projects: “Strategically Provided Boat Access Along Florida’s Gulf Coast—City of Port St. Joe, Frank Pate Boat Ramp Improvements” and “Florida Artificial Reef Creation and Restoration.”

Next Steps

The Trustees have scheduled a public meeting to facilitate public review and comment on the Draft Phase V ERP/EA. Both written and verbal comments will be taken at the public meeting. The Trustees will hold an open house followed by a formal meeting. The public meeting will include a presentation of the Draft Phase V ERP/EA. After the public comment period ends, the Trustees will consider and address the comments received before issuing a final Phase V Early Restoration Plan and Environmental Assessment (Final Phase V ERP/EA). After issuing a Final Phase V ERP/EA and if the Trustees approve the first phase of the Florida Coastal Access Project, the Trustees will file a negotiated stipulation for the approved Florida Coastal Access Project with the court. If approved, the first phase of the Florida Coastal Access Project will then proceed to implementation, pending compliance with all applicable State and Federal

laws. The Trustees anticipate considering a second phase of this Florida Coastal Access Project through a future restoration plan that will be subject to a separate notice and public comment process.

Invitation to Comment

The Trustees seek public review and comment on the proposed first phase of the Florida Coastal Access Project and supporting analysis included in the Draft Phase V ERP/EA. Through this Notice of Availability, the Trustees are seeking public review and comment for only the Draft Phase V ERP/EA. 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. You may submit comments on the Draft Phase V ERP/EA by one of the methods described in **ADDRESSES**.

This public review and comment process for the Draft Phase V ERP/EA is separate from the public comment processes for the *Deepwater Horizon Oil Spill Draft Programmatic Damage Assessment and Restoration Plan and Draft Programmatic Environmental Impact Statement* (Draft PDARP/PEIS) and the proposed Consent Decree Among Defendant BP Exploration & Production, Inc., the United States of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas, which ends on December 4, 2015. For more information on the Draft PDARP/PEIS, please visit <http://www.gulfspillrestoration.noaa.gov>. A link for the proposed Consent Decree and directions for comment to the Department of Justice is available at <http://www.gulfspillrestoration.noaa.gov>.

Administrative Record

The documents comprising the Administrative Record for the Draft Phase V ERP/EA can be viewed electronically at the following location: <https://www.doi.gov/deepwaterhorizon/adminrecord>.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and the implementing Natural Resource Damage Assessment regulations found at 15 CFR 990.

Cynthia K. Dohner,
DOI Authorized Official.

[FR Doc. 2015–30189 Filed 11–30–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[14XL 5413AR LLUTY02000
L12320000.EB0000 LVRDUT040000 24 1A]

Notice of Intent To Collect Fees on Public Land in San Juan County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (REA), the Monticello Field Office of the Bureau of Land Management (BLM) is proposing to begin collecting fees for overnight camping within four developed camping areas.

DATES: Effective six months after the publication of this notice, the BLM-Utah, Monticello Field Office would initiate fee collection at the Creek Pasture Campground, Creek Pasture Group Site, Superbowl Campground, and Indian Creek Falls Group Site for single occupancy campsites and group sites, unless the BLM publishes a **Federal Register** notice to the contrary.

FOR FURTHER INFORMATION CONTACT: Don Hoffheins, Field Office Manager, BLM-Monticello Field Office, 365 N. Main, Monticello, UT 84535, (435) 587-1500. 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 Utah Resource Advisory Council (RAC), functioning as a Recreation Resource Advisory Committee (RRAC), will review the proposal to charge fees at the four developed camping areas. Future adjustments in the fee amount will be made in accordance with the Monticello Field Office's publicly-reviewed recreation fee business plan covering the developed camping areas. Fee adjustments will be made after consultation with the Utah RRAC and general public support for the proposed fees are documented in conformance with section 6803(c) of the REA.

The four developed camping areas discussed in this notice are:

Salt Lake Meridian*Creek Pasture Campground*

Salt Lake Meridian, Utah

T. 30 S., R. 21 E.,
Secs. 20 and 21.

Creek Pasture Group Site

Salt Lake Meridian, Utah

T. 30 S., R. 21 E.,
Sec. 17.

Superbowl Campground

Salt Lake Meridian, Utah

T. 30 S., R. 21 E.,
Sec. 28.

Indian Creek Falls Group Site

Salt Lake Meridian, Utah

T. 30 S., R. 20 E.,
Sec. 1.

Under Section 6802(g)(2) of the REA, the camping areas listed above qualify as sites wherein visitors can be charged an "Expanded Amenity Recreation Fee." Visitors wishing to use the expanded amenities the BLM has developed at the Creek Pasture Campground, Creek Pasture Group Site, Superbowl Campground, and Indian Creek Falls Group Site would purchase a Recreation Use Permit as described at 43 CFR part 2933. Pursuant to REA and implementing regulations at 43 CFR part 2933, fees may be charged for overnight camping and group use reservations where specific amenities and services are provided. Specific visitor fees will be identified and posted at the developed recreation sites. Fees for individual sites at Creek Pasture and Superbowl campgrounds must be paid at the self-service pay station located at the camping areas. Fees for the Creek Pasture and Indian Creek Falls group sites must be paid for in advance with the Monticello Field Office. People holding the "America the Beautiful—The National Parks and Federal Recreational Lands Senior Pass" or "Access Pass" would be entitled to a 50 percent discount on expanded amenity fees, except those associated with group reservations. Fees charged for use of the group sites would include a non-refundable site reservation fee.

The Creek Pasture Campground is located in the heavily-used Utah Highway 211 corridor along Indian Creek and has proven to be very popular. Its sites are in use throughout the majority of the tourist season. BLM has added amenities for resource protection and visitor enjoyment. Creek Pasture is within the Indian Creek Special Recreation Management Area (SRMA). The Creek Pasture Campground offers 3 toilets, 32 individual sites, an access road, regular patrols, fire rings, tent spaces, and picnic tables.

The Creek Pasture Group Site is located at the north end of the Creek Pasture Campground, within the Indian Creek SRMA. The Creek Pasture Group Site offers a toilet, an access road,

regular patrols, fire rings, tent spaces, a shade shelter, and picnic tables.

The Superbowl Campground is located a quarter mile from Highway 211 within the Indian Creek SRMA and offers two toilets, seventeen individual sites, an improved access road, regular patrols, fire rings, tent spaces, and picnic tables.

The Indian Creek Falls Group Site is located approximately two miles from Highway 211 within the Indian Creek SRMA and offers a toilet, an access road, regular patrols, fire rings, tent spaces, and picnic tables.

The BLM is committed to providing and receiving fair market value for the use of developed recreation facilities and services in a manner that meets public use demands, provides quality experiences, and protects important resources. The BLM's policy is to collect fees at all specialized recreation sites, or where the BLM provides facilities, equipment or services at Federal expense, in connection with outdoor use as authorized by the REA. In an effort to meet increasing demands for services and increased maintenance of developed facilities, the BLM would implement a fee program for the developed camping areas. The BLM's mission for the developed camping areas is to ensure that funding is available to maintain facilities and recreational opportunities, to provide for law enforcement presence, and to protect public health and safety and public land resources. This mission entails communication with those who will be most directly affected by the developed camping areas such as recreationists, other recreation providers, partners, neighbors, elected officials, and other agencies.

Camping and group use fees would be consistent with other established fee sites in the area including other BLM-administered sites and those managed by the United States Forest Service, National Park Service, and Utah State Parks and Recreation. Future adjustments in the fee amount will be made following the Monticello Field Office's recreation fee business plan covering the sites, in consultation with the Utah RRAC and other public stakeholders prior to a fee adjustment.

In December 2004, the REA was signed into law. The REA provides authority for the Secretaries of the Interior and Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreational lands and waters, and contains specific provisions addressing public involvement in the establishment of recreation fees, including a requirement that RRACs or Councils have the

opportunity to make recommendations regarding establishment of such fees. The REA also directed the Secretaries of the Interior and Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established under their respective jurisdictions. In accordance with the BLM recreation fee program policy, the Monticello Field Office's draft Business Plan for BLM Monticello Field Office Campgrounds explains the proposal to collect fees at the four developed camping areas, the fee collection process, and how the fees will be used at the four developed camping areas. The BLM will provide the public with an opportunity to review and comment on the draft Business Plan for a minimum of 30 days prior to presenting the fee proposal for Utah RRAC review. The BLM will notify and involve the public at each stage of the planning process, including the proposal to collect fees. The Utah RRAC will review the fee proposals at its next meeting, following REA guidelines. Fee amounts will be posted on-site, on the BLM-Monticello Field Office Web site, and at the Monticello Field Office. Copies of the business plan will be available at the Monticello Field Office and the BLM-Utah State Office.

Authority: 16 U.S.C. 6803(b).

Jenna Whitlock,

Acting State Director.

[FR Doc. 2015-30515 Filed 11-30-15; 8:45 am]

BILLING CODE 4310-DQ-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-282 (Fourth Review)]

Petroleum Wax Candles from China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to

be assured of consideration, the deadline for responses is December 31, 2015. Comments on the adequacy of responses may be filed with the Commission by February 12, 2016.

DATES: *Effective Date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On August 28, 1986, the Department of Commerce issued an antidumping duty order on imports of petroleum wax candles from China (51 FR 30686). Following first five-year reviews by Commerce and the Commission, effective September 23, 1999, Commerce issued a continuation of the antidumping duty order on imports of petroleum wax candles from China (64 FR 51514). Following second five-year reviews by Commerce and the Commission, effective August 10, 2005, Commerce issued a second continuation of the antidumping duty order on imports of petroleum wax candles from China (70 FR 56890, September 29, 2005). Following the third five-year reviews by Commerce and the Commission, effective January 6, 2011, Commerce issued a third continuation of the antidumping duty order on imports of petroleum wax candles from China (76 FR 773). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the

OMB number is 3117-0016/USITC No. 15-5-348, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited first five-year review determination, the Commission defined the Domestic Like Product as petroleum wax candles. In its full second five-year review determination and its expedited third five-year review determination, the Commission defined the *Domestic Like Product* as candles with fiber or paper-cored wicks and containing any amount of petroleum wax, except for candles containing more than 50 percent beeswax.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined the Domestic Industry as producers of petroleum wax candles. In its full second five-year review determination and its expedited third five-year review determination, the Commission defined the *Domestic Industry* as consisting of all domestic producers of candles with fiber or paper-cored wicks and containing petroleum wax, except for candles that contain more than 50 percent beeswax.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list. Persons, including

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the

industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any

person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 31, 2015. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 12, 2016. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. See 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at <http://edis.usitc.gov>. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide

equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided In Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2009.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide

Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2014, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2009, and significant changes, if any, that are

likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: November 23, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015-30197 Filed 11-30-15; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-405 (Section 129 Consistency Determination)]

Hot-Rolled Steel Products From India; Scheduling of a Countervailing Duty Proceeding Under the Uruguay Round Agreements Act (URAA)

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the schedule for issuance of a consistency determination following receipt on November 6, 2015, of a request from the United States Trade Representative (USTR) for a determination under section 129(a)(4) of the URAA that would render the Commission's action in connection with its countervailing duty investigation regarding imports of hot-rolled steel products from India, in Inv. No. 701-

TA-405, not inconsistent with the recommendations and rulings of the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) in *United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436).

DATES: *Effective date:* November 6, 2015.

FOR FURTHER INFORMATION CONTACT:

Douglas E. Corkran (202-205-3057), Office of Investigations, or Robin L. Turner (202-205-3103), Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

SUPPLEMENTARY INFORMATION:

Background.—On December 19, 2014, the DSB of the WTO adopted its recommendations and rulings in the dispute entitled *United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436). On January 16, 2015, the United States informed the DSB of the U.S. intention to comply with its WTO obligations in this dispute. On November 6, 2015, the Commission received a request from USTR for a consistency determination under section 129(a)(4) of the URAA that would render the Commission's action in connection with its countervailing duty investigation regarding hot-rolled steel imports from India not inconsistent with the DSB recommendations and rulings in *United States—Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436). (This proceeding involves the Commission's affirmative determination in the countervailing duty investigation regarding hot-rolled steel imports from India in Inv. Nos. 701-TA-404-408 and 731-TA-899-904 and 906-908 (Final),

USITC Pub. 3446 (Aug. 2001) and USITC Pub. 3468 (Nov. 2001).) This request follows from the Commission's affirmative advisory report on October 23, 2015 in response to USTR's request, under section 129(a)(1) of the URAA, that Title VII of the Tariff Act of 1930 permitted the Commission to take steps in connection with its countervailing duty investigation regarding imports of hot-rolled steel products from India in Investigation No. 701-TA-405 that would render its action in that proceeding not inconsistent with the DSB recommendations and rulings in DS436. The Commission must issue its consistency determination within 120 days of the section 129(a)(4) request, or by March 7, 2016.

Participation in this proceeding and public service list.—Those persons who were interested parties participating in the original countervailing duty investigation regarding imports of hot-rolled steel products from India (*i.e.*, persons listed on the Commission Secretary's service list for Inv. No. 701-TA-405 (Final)), in addition to the Government of India, may participate in this proceeding. If an interested party is a successor firm to an interested party that participated in the original countervailing duty investigation regarding imports of hot-rolled steel products from India, please so indicate and describe the relationship. Interested parties, as described above, wishing to participate in this proceeding 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 December 11, 2015. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

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 regarding this proceeding available to authorized applicants under the APO issued in this proceeding, provided that the application is made no later than December 15, 2015. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to this proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Limitations on the scope of this proceeding.—This proceeding is being conducted in order for the Commission to make a determination that would

render its determination in the countervailing duty investigation regarding imports of hot-rolled steel products from India, in Inv. No. 701-TA-405, not inconsistent with the DSB recommendations and rulings in DS436. Thus, this proceeding only involves issues related to the DSB recommendations and rulings and does not involve issues that were not in dispute in DS436 or on which the United States was found in conformity with its obligations under the WTO *Agreement on Subsidies and Countervailing Measures*. The DSB recommendations and rulings in this regard are set out in paragraphs 4.587 to 4.600 of the Appellate Body report (WT/DS436/AB/R) (https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds436_e.htm); its conclusions based on these findings is set out in paragraph 5.1(h)(i) of the report. Any material in the interested parties' written comments that addresses any issue beyond those set forth in these paragraphs will be disregarded.

Staff report.—The supplemental staff report in this proceeding will be placed in the nonpublic record on December 21, 2015, and a public version will be issued thereafter.

Written submissions.—Each party who is an interested party may submit one set of written comments to the Commission. Written comments will be limited to no more than fifty (50) double-spaced and single-sided pages of textual material. The deadline for filing written comments is January 8, 2016. 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, will 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 this proceeding must be served on all other parties to this proceeding (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: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930 and section 129 of the URAA.

Issued: November 25, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015-30441 Filed 11-30-15; 8:45 am]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books>.

DATES: January 7–8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

ADDRESSES: Royal Palms Hotel, 5200 East Camelback Road, Phoenix, Arizona 85018.

FOR FURTHER INFORMATION CONTACT:

Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: November 24, 2015.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2015-30345 Filed 11-30-15; 8:45 am]

BILLING CODE 2210-55-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Residential Lead-Based Paint Hazard Reduction Act

On November 24, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Illinois in the lawsuit entitled *United States v. Dennis Hardesty*, Civil Action No. 3:15 C 50295.

The consent decree settles claims against the owner and manager of 52 housing units in 50 separate properties located in or near Rockford, Illinois. The claims were brought on behalf of the Environmental Protection Agency and the Department of Housing and Urban Development under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in the complaint that the Defendant failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

Under the Consent Decree, the Defendant will certify that he is complying with residential lead paint notification requirements. The Defendant will submit a plan for window replacement work and will replace all windows known to or believed to contain lead-based paint in these 52 housing units owned or managed by Defendant that are not certified lead-based paint free. In addition, Defendant will abate lead-based paint hazards on friction and impact surfaces, stabilize other lead-based paint hazards, and pay an administrative penalty of \$5,000.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Hardesty*, D.J. Ref. # 90-5-1-1-10760. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, D.C. 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$14.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015-30334 Filed 11-30-15; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Asbestos in Shipyards Standard

ACTION: Notice.

SUMMARY: On November 30, 2015, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Asbestos in Shipyards Standard," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 31, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201511-1218-004 (this link will only become active on December 1, 2015) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of

the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Asbestos in Shipyards Standard information collection requirements codified in regulations 29 CFR 1915.1001 that help to protect workers from the adverse health effects that may result from occupational exposure to asbestos. The major information collection requirements in the standard include: implementing an exposure-monitoring program that informs workers of their exposure-monitoring results; ensuring notification of on-site employers, at multi-employer worksites, when establishing regulated areas for work performed with asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs), of the requirements for such regulated areas, and the measures necessary to protect workers from overexposure; providing medical surveillance for workers potentially exposed to ACMs and/or PACMs, including administering a worker medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the worker; and maintaining records of objective data used for exposure determinations, worker exposure monitoring and medical surveillance records, training records, the record (*i.e.*, information, data, and analyses) used to demonstrate that PACMs do not contain asbestos, and notifications made, as well as received by building or facility owners regarding the content of ACMs and/or PACMs. Occupational Safety and Health Act of 1970 sections 2(b)(9), 6, and 8(c) authorize this information collection. See 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218-0195.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on November 30, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 21, 2015 (80 FR 29344).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218-0195. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL-OSHA.

Title of Collection: Asbestos in Shipyards Standard.

OMB Control Number: 1218-0195.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 317.

Total Estimated Number of Responses: 3,072.

Total Estimated Annual Time Burden: 1,189 hours.

Total Estimated Annual Other Costs Burden: \$43,003.

Dated: November 24, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015-30409 Filed 11-30-15; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "The Consumer Expenditure Surveys: The Quarterly Interview and the Diary." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **Addresses** section of this notice on or before February 1, 2016.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202-691-5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Expenditure (CE) Surveys collect data on consumer

expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions, (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation, and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policymakers widely accept the need to improve the process used for revising the CPI. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely, as well as more accurate, updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand from the public and private sectors for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over four calendar quarters. The sample for each quarter is divided into three panels, with CUs being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents

can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Current Action

Office of Management and Budget clearance is being sought for the proposed revision of the Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

Additionally, as part of an ongoing effort to improve data quality, maintain or increase response rates, and reduce data collection costs, CE is seeking clearance to field an Incentives/Outlets Field Test. CE plans to test the effect different incentive delivery procedures and incentive amounts have on survey costs, response rates, and data quality for the CE Interview Survey (CEQ). The results of this FY2016 Incentives Field test will be used to inform the Large Scale Feasibility test (to be fielded in 2018) as well as the overall Gemini Redesign project. Also, CE and the Consumer Price Index (CPI) plan to test integrating outlet questions into the CEQ survey. Outlet data are currently collected by the Telephone Point of Purchase Survey (TPOPS). The results of the integration of outlet questions into the CEQ survey will be used to inform future CPI initiatives.

A full list of the proposed changes to the Quarterly Interview Survey and Diary Survey are available upon request.

In addition to the Incentives/Outlets test, the Consumer Expenditure program is planning several tests over the next several years in an effort to improve the CE surveys in the areas of both data quality and respondent burden.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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 submissions of responses.

Type of Review: Revision, of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220–0050.

Affected Public: Individuals or Households.

TOTAL RESPONSE BURDEN FOR THE QUARTERLY INTERVIEW AND DIARY SURVEYS

	Quarterly	Diary	Total	Incentives/ Outlets Test
Number of responses	30,630	35,880	66,847	.....
Total burden hours	25,805	32,660	58,739	370
Total burden hours including Incentives/Outlets Test				58,835

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 25th day of November 2015.

Kimberly Hill,
*Chief, Division of Management Systems,
Bureau of Labor Statistics.*

[FR Doc. 2015–30410 Filed 11–30–15; 8:45 am]

BILLING CODE 4510–24–P

**NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION**

[NARA–2016–006]

**Records Schedules; Availability and
Request for Comments**

AGENCY: National Archives and Records
Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide agencies with mandatory instructions for what to do with records when agencies no longer need them for current Government business. The instructions authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or to reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by December 31, 2015. Once NARA appraises the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR); 8601 Adelphi Road; College Park, MD 20740-6001.

Email: request.schedule@nara.gov.

FAX: 301-837-3698.

You must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Management Services (ACNR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001, by phone at 301-837-1799, or by email at request.schedule@nara.gov.

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media-neutral unless otherwise specified. An item in a schedule is media-neutral when an agency may apply the disposition instructions to records regardless of the medium in which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media-neutral unless the item is specifically limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, lists the organizational unit(s) accumulating the records or lists that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Forest Service (DAA-0095-2016-0001, 6 items, 1 temporary item). Duplicate copies of aerial photographic imagery. Proposed for permanent retention are original analog negative film, digital imagery that does not exist in analog format, negative imagery indices, and film reports.

2. Department of Education, Federal Student Aid (DAA-0441-2015-0001, 1 item, 1 temporary item). Master file of an electronic information system containing account information about recipients of Federal Student Aid.

3. Department of the Interior, Agency-wide (DAA-0048-2013-0008, 15 items, 4 temporary items). Policy development records relating to legislative input, compliance reporting, and rulemaking. Proposed for permanent retention are high-level policy records to include oversight, official legislative reports, public affairs, regulations, executive commissions, and media records.

4. Department of State, Bureau of Conflict and Stabilization Operations (DAA-0059-2014-0025, 4 items, 4 temporary items). Records of the Office of Learning and Training, including training materials, guidance and best practice documents, evaluations, and administration records.

5. Department of State, Bureau of Energy Resources (DAA-0059-2015-0011, 8 items, 8 temporary items). Records include press guidance, publicity materials, copies of analysis and briefing materials, and public comments related to energy issues.

6. Department of State, Bureau of European and Eurasian Affairs and International Organizations (DAA-0059-2015-0014, 1 item, 1 temporary item). Master file of an electronic information system used to track employee performance evaluations.

7. Department of Transportation, Federal Highway Administration (DAA-0406-2014-0003, 3 items, 3 temporary items). Records concerning a data portal used to access traffic data.

8. Department of Transportation, Federal Highway Administration (DAA-0406-2015-0002, 1 item, 1 temporary item). Records relating to emergency relief program case files, including applications, fund allocation, correspondence, and reports.

9. Department of Transportation, Surface Transportation Board (DAA-0134-2013-0013, 1 item, 1 temporary item). Electronic records relating to Amtrak on-time performance.

10. Department of the Treasury, Internal Revenue Service (DAA-0058-2015-0007, 1 item, 1 temporary item).

Referrals from government agencies of alleged tax violations upon which no further action is taken.

11. Federal Communications Commission, Office of the Managing Director (DAA-0173-2015-0006, 3 items, 3 temporary items). Records include worksheets and information collected from service providers related to the Telecommunications Relay Service.

12. Federal Communications Commission, Wireline Competition Bureau (DAA-0173-2015-0008, 1 item, 1 temporary item). Annual certification letters for telecommunications carriers.

13. National Archives and Records Administration, Research Services (N2-60-14-1, 1 item, 1 temporary item). Records of the Department of Justice, Civil Division, relating to the Mortgage and Lien Foreclosure Act. The records consist of temporary case files for civil actions against a holder of a defaulted mortgage or loan (1931-1948). These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

14. National Archives and Records Administration, Research Services (N2-60-14-2, 1 item, 1 temporary item). Records of the Department of Justice, Civil and Criminal Divisions, relating to the Federal Housing Act. The records consist of temporary case files for civil and criminal actions regarding insured mortgages and home improvement and repair loans (1934-1968). These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

15. National Archives and Records Administration, Research Services (N2-60-14-3, 1 item, 1 temporary item). Department of Justice, Environment and Natural Resources Division, temporary case files for civil and criminal actions regarding eviction and delinquent rentals owed to U.S. Government owned housing programs (1938-1949). These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

16. National Archives and Records Administration, Research Services (N2-60-14-4, 1 item, 1 temporary item). Department of Justice, Civil and Criminal Divisions, temporary case files for civil and criminal actions relating to the collection of farm security, rural rehabilitation and soil conservation loans made by the Farmers Home Administration (1938-1949). These records were accessioned to the National Archives but lack sufficient

historical value to warrant continued preservation.

17. National Archives and Records Administration, Research Services (N2-60-14-5, 1 item, 1 temporary item). Department of Justice, Civil and Criminal Divisions, temporary case files for civil and criminal actions relating to the collection of unpaid loans made by the Farm Credit Administration (1934-1949). These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

18. National Archives and Records Administration, Research Services (N2-60-14-6, 1 item, 1 temporary item). Department of Justice, Criminal Division, temporary case files for criminal actions relating to the theft of U.S. Government property (1921-1957). These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

19. National Archives and Records Administration, Research Services (N2-60-14-7, 1 item, 1 temporary item). Department of Justice, Civil and Criminal Divisions, temporary case files for civil and criminal actions relating to claims filed under the War Risk Insurance Act (1917-1948). These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

20. National Archives and Records Administration, Research Services (N2-60-14-8, 1 item, 1 temporary item). Department of Justice, Criminal Division, temporary case files for criminal actions relating to individual impersonation or misrepresentation as Federal officers, agents, employees, and members of the U.S. Armed Forces (1921-1951). These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

Dated: November 20, 2015.

Laurence Brewer,

Director, National Records Management Program.

[FR Doc. 2015-30381 Filed 11-30-15; 8:45 am]

BILLING CODE 7515-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-18 and CP2016-24; Order No. 2840]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning

the addition of Priority Mail Contract 154 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 3, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 154 to the competitive product list.¹

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016-18 and CP2016-24 to consider the Request pertaining to the proposed Priority Mail Contract 154 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are

¹ Request of the United States Postal Service to Add Priority Mail Contract 154 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 24, 2015 (Request).

due no later than December 3, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–18 and CP2016–24 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 3, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,
Secretary.

[FR Doc. 2015–30435 Filed 11–30–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–21 and CP2016–27;
Order No. 2838]

New Postal Product

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express, Priority Mail, & First-Class Package Service Contract 6 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 3, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 6 to the competitive product list.¹

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–21 and CP2016–27 to consider the Request pertaining to the proposed Priority Mail Express, Priority Mail, & First-Class Package Service Contract 6 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 3, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–21 and CP2016–27 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 3, 2015.

¹ Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 6 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 24, 2015 (Request).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,
Secretary.

[FR Doc. 2015–30432 Filed 11–30–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 22 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2016–20, CP2016–26.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–30370 Filed 11–30–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 6 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2016–21, CP2016–27.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–30362 Filed 11–30–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 155 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2016–19, CP2016–25.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–30369 Filed 11–30–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 154 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2016–18, CP2016–24.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–30367 Filed 11–30–15; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: Application for Survivor Insurance Annuities; OMB 3220–0030.

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced spouses, mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees if there are no qualified survivors of the employee immediately eligible for an annuity. The requirements relating to the annuities are prescribed in 20 CFR 216, 217, 218, and 219.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, a survivor annuity the RRB uses Forms AA–17, *Application for Widow(er)'s Annuity*; AA–17b, *Applications for Determination of Widow(er)'s Disability*; AA–18, *Application for Mother's/Father's and Child's Annuity*; AA–19, *Application for Child's Annuity*; AA–19a, *Application for Determination of Child's Disability*; AA–20, *Application for Parent's Annuity*, and electronic Forms AA–17cert, *Application Summary and Certification* and AA–17sum, *Application Summary*.

The on-line automated survivor annuity application (Forms AA–17, AA–18, AA–19, and AA–20) process obtains information about an applicant's marital history, work history, benefits from other government agencies, and Medicare entitlement for a survivor annuity. An RRB representative interviews the applicant either at a field office (preferred), an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the system generates, for the applicant's review, either Form AA–17cert or AA–17sum, which provides a summary of the information that the applicant provided or verified. Form AA–17cert, *Application Summary and Certification*, requires a tradition pen and ink "wet" signature. Form AA–17sum, *Application Summary*, documents the alternate signing method called "Attestation," which is an action taken by the RRB representative to confirm and annotate in the RRB records (1) the applicant's intent to file an application; (2) the applicant's affirmation under penalty of perjury that the information provided is correct; and (3) the applicant's agreement to sign the application by proxy. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of the appropriate form is used. One response is requested of each respondent. Completion of the forms is required to obtain a benefit.

The RRB proposes to remove the paper version of Forms AA–17, AA–18, AA–19, and AA–20 from the information collection due to receiving less than 10 responses a year. No changes are proposed to electronic Forms AA–17cert, AA–17sum, or manual Forms AA–17b and AA–19a.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form number	Annual responses	Time (minutes)	Burden (hours)
AA-17 Application Process			
AA-17cert	900	20	300
AA-17sum	2,100	19	665
AA-17b			
(With assistance)	250	40	167
(Without assistance)	20	50	17
AA-19a			
(With assistance)	200	45	150
(Without assistance)	15	65	16
Total	3,485	.....	1,315

2. *Title and purpose of information collection:* Application for Spouse Annuity under the Railroad Retirement Act; OMB 3220-0042.

Section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age, date of retirement, and years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR 216, 218, 219, 232, 234, and 295.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, a spouse annuity the RRB uses Form AA-3, *Application for Spouse/Divorced Spouse Annuity*, and electronic Forms AA-3cert, *Application Summary and*

Certification, and AA-3sum, *Application Summary*.

The AA-3 application process gathers information from an applicant about their marital history, work history, benefits from other government agencies, and Medicare entitlement for a spouse annuity. An RRB representative interviews the applicant either at a field office (preferred), an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the system generates, for the applicant's review, either Form AA-3cert or AA-3sum, which is a summary of the information that the applicant provided or verified. Form AA-3cert, *Application Summary and Certification*, requires a traditional pen and ink "wet" signature. Form AA-

3sum, *Application Summary*, documents an alternate signing method called "Attestation," which is an action taken by the RRB representative to confirm and annotate in the RRB records (1) the applicant's intent to file an application; (2) the applicant's affirmation under penalty of perjury that the information provided is correct; and (3) the applicant's agreement to sign the application by proxy. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of Form AA-3 is used. One response is requested of each respondent. Completion of the form is required to obtain a benefit.

The RRB proposes to remove the paper version of the AA-3 from the information collection due to receiving less than 10 responses a year.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form number	Annual responses	Time (minutes)	Burden (hours)
Form AA-3 Online Process			
Form AA-3cert (Ink Signature)	4,700	30	2,350
Form AA-3sum (Attestation)	7,000	29	3,383
Total	11,700	.....	5,733

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751-4981 or Dana.Hickman@RRB.GOV. Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or emailed to Charles.Mierzwa@RRB.GOV. Written

comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2015-30443 Filed 11-30-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76524; File No. SR-BATS-2015-102]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rule 11.27 Regarding the Data Collection Requirements of the Tick Size Pilot Program

November 25, 2015.

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 November 13, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt Exchange Rule 11.27 to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

The text of the proposed rule change is available at the Exchange’s Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC, and NYSE Arca, Inc. (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act³ and Rule 608 of Regulation NMS thereunder,⁴ the Plan to

Implement a Tick Size Pilot Program (“Pilot”).⁵ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁶ The Plan⁷ was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁸

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require Members⁹ to comply with the applicable data collection requirements of the Plan.¹⁰

The Pilot will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).¹¹ During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group (“Test Group One”) will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.¹² Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.¹³ Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.¹⁴ In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS¹⁵ will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (e.g., transaction costs by order size), execution quality (e.g., speed of order executions), market maker activity, competition between trading venues (e.g., routing frequency of market orders), transparency (e.g., choice between displayed and hidden orders), and market dynamics (e.g., rates and speed of order cancellations).¹⁶ The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market maker profits and any corresponding changes in the liquidity of small-capitalization securities.¹⁷

Compliance With the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.¹⁸ Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers¹⁹ to submit variety of

⁵ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁶ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁷ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁸ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

⁹ The term “Member” is defined as “any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.” See Exchange Rule 1.5(n).

¹⁰ The Exchange proposes to add Information and Policy .11 to Rule 11.27 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

¹¹ See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

¹² See Section VI(B) of the Plan.

¹³ See Section VI(C) of the Plan.

¹⁴ See Section VI(D) of the Plan.

¹⁵ 17 CFR 242.611.

¹⁶ See Approval Order, 80 FR at 27543.

¹⁷ *Id.*

¹⁸ The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange intends to separately propose rules that would require compliance by its Members with the applicable quoting and trading requirements specified in the Plan, and has reserved Paragraph (a) for such rules.

¹⁹ The Plan incorporates the definition of a “Trading Center” from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a “Trading Center” as “a national securities exchange or national securities association that operates an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78k–1.

⁴ 17 CFR 242.608.

market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, *e.g.*, from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.²⁰ Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer ("NBBO") quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority ("DEA") for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

The Exchange is therefore proposing Rule 11.27(b) to set forth the requirements for the collection and transmission of data pursuant to Appendix B.I and B.II of the Plan. Proposed Rule 11.27(b)(1) requires that a Member that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission

requirements of Items I and II to Appendix B of the Plan, and a Member that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission

requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Rule 11.27(b)(2) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the Member that generated the data.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker²¹ engaging in trading activity on a Trading Center operated by the Participant. The Exchange is therefore proposing Rule 11.27(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 11.27(b)(3)(A) provides that a Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) Transactions in each Pre-Pilot Data Collection Security for

the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 11.27(b)(3)(B) provides that the Exchange shall transmit the data collected by the DEA pursuant to Rule 11.27(b)(3)(A) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Rule 11.27(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 11.27(b)(4)(A) requires that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan, as modified by Paragraph (b)(5) with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The proposed rule also requires Members to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and

SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.600(b).

²⁰ 17 CFR 242.605.

²¹ The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) Ticker symbol; (ii) the Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers. Therefore, the Exchange proposes to adopt Rule 11.27(b)(5) providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for: (i) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) For transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange is also proposing, through Interpretations and Policies, to clarify other aspects of the data collection requirements.²² Proposed Interpretations and Policy .02 relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a “yes/no” field relating to the Retail Investor Order flag. The Exchange is proposing Interpretations and Policy .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report “y” to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and “n” for all other instances. The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (*i.e.*, Pilot Securities in Test Groups Two and

Three) is consistent with Appendix B.II(n).

Interpretations and Policy .03 requires that Members populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.²³ Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor (“SIP”) calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock’s reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (*e.g.*, the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of “Y” to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of “N” to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Interpretation and Policy .03 also requires, for dually-listed securities, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) Fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in

dually-listed Pilot and Pre-Pilot Securities as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the Member. The Exchange believes that this proposed flag will better identify orders in dually-listed securities, as such orders that were executed in foreign venues would not be subject to the Plan’s quoting and trading requirements, and could otherwise compromise the integrity of the data.

Interpretations and Policy .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).²⁴ The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.²⁵

²⁴ Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

²⁵ The Exchange notes that FINRA intends to file an exemptive request seeking relief from certain of the Plan’s data collection requirements, including the requirements that Trading Centers report information in either microseconds or milliseconds, as not all Trading Centers currently capture and

²² The Exchange is also proposing Interpretations and Policy .01 to Rule 11.27 to clarify that certain enumerated terms used throughout Rule 11.27 shall have the same meaning as set forth in the Plan.

²³ See National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Limit-Up Limit-Down Plan”).

Interpretations and Policy .05 relates to the relevant measurement for purposes of Appendix B.I.a(31)–(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through Interpretations and Policy .05.²⁶ This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Interpretations and Policy .06 addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. The Exchange and the other Participants have determined that it is appropriate to include separate categories for both not held orders and auction orders for purposes of Appendix B reporting. The Exchange is therefore proposing Interpretations and Policy .06 to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should

report orders in either microseconds or milliseconds.

²⁶ This proposed change is also part of an exemptive request that the Exchange and the other Participants will be submitting to the SEC pursuant to Rule 608(e) of Regulation NMS.

be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing Interpretations and Policy .07 to clarify the scope of the Plan as it relates to Members that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a Member that only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order²⁷ shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing Supplementary Material .09 to make this clarification.

The Exchange is proposing Interpretations and Policy .08 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the Member's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its Web site pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.²⁸

The Exchange is proposing Interpretations and Policy .09 to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is

therefore proposing Interpretations and Policy .09 to make this change.²⁹ The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

Finally, the Exchange is proposing Interpretations and Policy .10 to address the securities that will be used for data collection purposes prior to the commencement of the Pilot. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities. The Exchange is therefore proposing Interpretations and Policy .09 to define "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading

²⁷ The Exchange notes that where a Member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would subject to subject to Appendix B of the Plan.

²⁸ In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, e.g., by May 6, 2016. See Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. See Securities Exchange Act Release No. 76382 (November 6, 2015) (File No. 4–657).

²⁹ Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Security.

The proposed rule change will be effective upon Commission approval. The implementation date will be April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act³¹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that

this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for Members that operate Trading Centers will apply equally to all such Members, as will the data collection requirements for Market Makers.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-BATS-2015-102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2015-102. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2015-102 and should be submitted on or before December 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Brent J. Fields,

Secretary.

[FR Doc. 2015-30479 Filed 11-30-15; 8:45 am]

BILLING CODE 8011-01-P

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

³² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76518; File No. SR-NASDAQ-2015-145]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Managed Fund Shares in the Lead Market Maker Program

November 24, 2015.

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 November 18, 2015, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Managed Fund Shares to the list of securities eligible to be Qualified Securities under the Lead Market Maker Program of Rule 7014(f). The Exchange will implement the proposed change no earlier than December 1, 2015 and no later than January 4, 2016. The implementation date will be announced by an Equity Trader Alert.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 include Managed Fund Shares, as described under Rule 5735, to the list of securities eligible to be treated as a Qualified Security under the Lead Market Maker (“LMM”) Program of Rule 7014(f). The LMM Program is designed to provide incentive to market makers to make markets in certain relatively illiquid exchange-traded products (“ETPs”). The Exchange provides credits to a designated LMM for execution of a Qualified Security. Under Rule 7014(f)(1), a Qualified Security is defined as an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares), 5710 (Securities Linked to the Performance of Indexes and Commodities, Including Currencies), or 5720 (Trust Issued Receipts), and it must have at least one LMM. A LMM is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. A LMM is selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded funds and index-linked securities, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of LMMs in a security, or modify a previously established limit, upon prior written notice to members.

As noted above, Nasdaq currently includes in the program Portfolio Depository Receipts, Index Fund Shares, Securities Linked to the Performance of Indexes and Commodities, and Trust Issued Receipts. Nasdaq is proposing to add another ETP, Managed Fund Shares, as eligible to be a Qualified Security under the LMM Program. A Managed Fund Share is a security that (a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a

value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.³ Managed Fund Shares are similar to other Exchange Traded Funds (“ETFs”) listed pursuant to Rule 5705(b), which, like Managed Fund Shares, are organized as an open-end investment company or similar entity. Unlike Rule 5705(b) ETFs that seek to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof, Managed Fund Share ETFs are actively-managed, in that they invest in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. Nasdaq has observed that Managed Fund Shares are generally less liquid than other ETPs. Consequently, Nasdaq has determined to allow Managed Fund Shares to be considered Qualified Securities under the program, which the Exchange believes will improve market quality in these securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that inclusion of Managed Fund Shares in the LMM Program is reasonable because they are currently relatively thinly-traded on Nasdaq, and the LMM Program is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Rule 5735(c)(1).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4) and (5).

designed [sic] improve liquidity in ETPs. Specifically, the LMM Program allocates rebates to LMMs that quote at the national best bid and best offer for certain percentages of time. As additional incentive, the LMM Program also provides different levels of fee caps on the fees assessed for participation in the Opening and Closing Crosses on Nasdaq. The LMM Program has been successful at improving market quality in the securities covered by the program. As such, the Exchange believes the program will be effective at providing incentive to market makers on Nasdaq to become LMMs in a [sic] Managed Fund Shares thereby improving market quality in those securities. The Exchange also believes that including Managed Fund Shares is reasonable because they are similar to other ETFs, which are currently included in the LMM Program. The Exchange believes that the proposed change to Rule 7014(f) is an equitable allocation and is not unfairly discriminatory because all market makers that voluntarily elect to be designated as LMMs and meet the minimum performance criteria have the opportunity to qualify for a rebate and fee cap under the program in Managed Fund Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the change is designed to promote improved market quality through the application of an ETP incentive program to a type of ETP that is currently not part of the program, and has comparatively low liquidity. Such a change is designed to improve market quality in Qualified Securities on Nasdaq, and does not place a burden on competition between market participants as the changes are applied consistently to all participants. Lastly, to the extent market quality improves on Nasdaq in Managed Fund Shares, the proposed change may promote competition among exchanges for new Managed Fund Share listings and similar incentive programs, to the benefit of all market participants transacting in Managed Fund Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

At any time within 60 days of the filing of the proposed rule change, the Commission 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 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-NASDAQ-2015-145 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-NASDAQ-2015-145. 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

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-145 and should be submitted on or before December 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-30384 Filed 11-30-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76525; File No. SR-NYSEMKT-2015-95]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Establishing Fees for the NYSE MKT Integrated Feed

November 25, 2015.

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 November 16, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE MKT Integrated Feed. 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 establish the fees for the NYSE MKT Integrated Feed in the NYSE MKT Equities Proprietary Market Data Fee Schedule ("Fee Schedule").³ The Exchange proposes to make the NYSE MKT Integrated Feed available without charge starting on November 16, 2015. The Exchange proposes to establish the following fees for the NYSE MKT Integrated Feed operative on January 1, 2016:

1. *Access Fee.* For the receipt of access to the NYSE MKT Integrated Feed, the Exchange proposes to charge \$2,500 per month.

2. *User Fees.* The Exchange proposes to charge a Professional User Fee (Per User) of \$10 per month and a Non-Professional User Fee (Per User) of \$2 per month. These user fees would apply to each display device that has access to the NYSE MKT Integrated Feed.

3. *Non-Display Fees.* The Exchange proposes to establish non-display fees

for the NYSE MKT Integrated Feed using the same non-display use fee structure established for the Exchange's other market data products.⁴ Non-display use would mean accessing, processing, or consuming the NYSE MKT Integrated Feed delivered via direct and/or Redistributor⁵ data feeds for a purpose other than in support of a data recipient's display or further internal or external redistribution ("Non-Display Use"). Non-Display Use would include any trading use, such as high frequency or algorithmic trading, and would also include any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

Under the proposal, for Non-Display Use of NYSE MKT Integrated Feed, there would be three categories of, and fees applicable to, data recipients. One, two or three categories of Non-Display Use may apply to a data recipient.

- Under the proposal, the Category 1 Fee would be \$5,000 per month and would apply when a data recipient's Non-Display Use of the NYSE MKT Integrated Feed is on its own behalf, not on behalf of its clients.

- Under the proposal, Category 2 Fees would be \$5,000 per month and would apply to a data recipient's Non-Display Use of the NYSE MKT Integrated Feed on behalf of its clients.

- Under the proposal, Category 3 Fees would be \$5,000 and would apply to a data recipient's Non-Display Use of the NYSE MKT Integrated Feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative trading systems ("ATs"), broker crossing networks, broker crossing systems not filed as ATs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. Category 3 Fees would be capped at \$15,000 per month for each data recipient for the NYSE MKT Integrated Feed.

⁴ See Securities Exchange Act Release Nos. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013) (SR-NYSEMKT-2013-32) and 72020 (Sept. 9, 2014), 79 FR 55040 (Sept. 15, 2014) (SR-NYSE-2014-72) [sic].

⁵ "Redistributor" means a vendor or any person that provides a real-time NYSE MKT data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

Non-Display Use fees for NYSE MKT Integrated Feed include, for customers also paying access fees for NYSE MKT BBO, NYSE MKT Trades, NYSE MKT OpenBook and NYSE MKT Order Imbalances, the Non-Display Use for such products when declared within the same category of use.

The description of the three non-display use categories is set forth in the Fee Schedule in endnote 1 and that endnote would be referenced in the NYSE MKT Integrated Feed fees on the Fee Schedule. The text in the endnote would remain unchanged.

Data recipients that receive the NYSE MKT Integrated Feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed.⁶ A firm subject to Category 3 Fees would be required to identify each platform that uses the NYSE MKT Integrated Feed on a Non-Display Use basis, such as ATs and broker crossing systems not registered as ATs, as part of the Non-Display Use Declaration.

4. *Non-Display Declaration Late Fee.* Data recipients that receive the NYSE MKT Integrated Feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. Beginning in 2017, NYSE MKT Integrated Feed data recipients would be required to submit, by January 31st of each year, the Non-Display Use Declaration that applies to all real-time NYSE MKT market data products that include Non-Display Use fees.⁷ The Exchange proposes to charge a Non-Display Declaration Late Fee of \$1,000 per month to any data recipient that pays an Access Fee for NYSE MKT Integrated Feed that has failed to complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by January 31st of each year beginning in 2017, the Non-Display Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the January 31st due date, and would apply beginning February 1st and for each month thereafter until the data recipient

⁶ Data recipients are required to complete and submit the Non-Display Declaration with respect to each market data product on the Fee Schedule that includes Non-Display Fees. See Securities Exchange Act Release Nos. 74885 (May 6, 2015), 80 FR 27205 (May 12, 2015) (SR-NYSEMKT-2015-34) (NYSE MKT OpenBook) and 74884 (May 6, 2015), 80 FR 27212 (May 12, 2015) (SR-NYSEMKT-2015-35) (NYSE MKT Order Imbalances) and 74882 (May 6, 2015), 80 FR 27210 (May 12, 2015) (SR-NYSEMKT-2015-36) (NYSE MKT Trades and NYSE MKT BBO).

⁷ *Id.*

³ The proposed rule change establishing the NYSE MKT Integrated Feed was immediately effective on January 23, 2015. See Securities Exchange Act Release No. 74127 (Jan. 23, 2015), 80 FR 4956 (Jan. 29, 2015) (SR-NYSEMKT-2015-06).

has completed and submitted the annual Non-Display Use Declaration. The Exchange also proposes to apply current endnote 2 on the Fee Schedule to the Non-Display Declaration Late Fee for NYSE MKT Integrated Feed, but proposes to modify endnote 2 to the Fee Schedule so that it is clear that the Non-Display Declaration Late Fee applies to the NYSE MKT Integrated Feed beginning February 1st of 2017 and each year with respect to the Non-Display Use Declaration due by January 31st each year.⁸

In addition, if a data recipient's use of the NYSE MKT Integrated Feed data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

5. *Redistribution Fee.* For redistribution of the NYSE MKT Integrated Feed, the Exchange proposes to establish a fee of \$1,500 per month.

The Exchange notes that the three existing data feed products—NYSE MKT OpenBook, NYSE MKT Trades, and NYSE MKT Order Imbalances—would continue to be available to vendors and subscribers separately, in each case at the same prices at which they are currently available.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes it is equitable and not unfairly discriminatory to make

the NYSE MKT Integrated Feed available free of charge through December 31, 2015 because providing it at no charge would provide an opportunity for vendors and subscribers to determine whether the NYSE MKT Integrated Feed suits their needs without incurring fees. Other exchanges provide or have provided market data products free for a certain period of time.¹²

The fees for the NYSE MKT Integrated Feed are reasonable because they represent not only the value of the data available from three existing data feeds but also the value of receiving the data on an integrated basis. Receiving the data on an integrated basis provides greater efficiencies and reduced errors for vendors and subscribers that currently choose to integrate the data themselves after receiving it from the Exchange. Some vendors and subscribers may not have the technology or resources to integrate the separate data feeds in a timely and/or efficient manner, and thus the integration feature of the product may be valuable to them.

Moreover, the fees are equitably allocated and not unfairly discriminatory because vendors and subscribers may choose to continue to receive some or all of the data through the existing separate feeds at current prices, or they can choose to pay for the NYSE MKT Integrated Feed in order to receive integrated data, or they can choose a combination of the two approaches, thereby allowing each vendor or subscriber to choose the best business solution for itself.

The Exchange believes the proposed monthly Access Fee of \$2,500 and monthly Redistribution Fee of \$1,500 for NYSE MKT Integrated Feed are reasonable because they are comparable to the total of the same types of fees for NYSE MKT OpenBook, NYSE MKT Trades, and NYSE MKT Order Imbalances. The monthly Access Fee for NYSE MKT OpenBook is \$1,000, for NYSE MKT Trades is \$750 and for NYSE MKT Order Imbalances is \$500.¹³

¹² For example, the Exchange, through NYSE Amex Options LLC, offered ArcaBook for Amex Options-Complex and NYSE Arca, Inc. ("NYSE Arca"), an affiliate of the Exchange, without charge between May 1, 2014 and October 31, 2014. See Securities Exchange Act Release Nos. 72074 (May 1, 2014), 79 FR 26277 (May 7, 2014) (NYSEArca 2014-51) and 72075 (May 1, 2014), 79 FR 26290 (May 7, 2014) (NYSEMKT 2014-40). NASDAQ provides a 30-day free trial related to NASDAQNASDAQ [sic] TotalView. See NASDAQ Rule 7023(e).

¹³ The Access Fee for Managed Non-Display Services only for NYSE MKT OpenBook is \$500 per month, for NYSE MKT Trades is \$375 per month and for NYSE MKT Order Imbalances is \$250 per month. Managed Non-Display Services will not be offered for NYSE MKT Integrated Feed.

The monthly Redistribution Fee for NYSE MKT Trades is \$750.¹⁴

The Exchange believes that it is reasonable to charge redistribution fees because vendors receive value from redistributing the data in their business products for their customers. The redistribution fees also are equitable and not unfairly discriminatory because they will be charged on an equal basis to those vendors that choose to redistribute the data. Also, the proposed redistribution fee for NYSE MKT Integrated Feed is reasonable because it is comparable to the redistribution fees that are currently charged by other exchanges.¹⁵

The proposed monthly Professional User Fee (Per User) of \$10 and Non-Professional User Fee (Per User) of \$2 are reasonable because they are comparable to the total of the per user fees for NYSE MKT OpenBook and NYSE MKT Trades. The monthly Professional User Fee (Per User) for NYSE MKT OpenBook is \$5 and for NYSE MKT Trades, it is \$1. The monthly Non-Professional User Fee (Per User) for NYSE MKT OpenBook is \$1 and for NYSE MKT Trades, it is \$0.05.

The Exchange believes that having separate Professional and Non-Professional User fees for the NYSE MKT Integrated Feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the NYSE MKT Integrated Feed by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees applies to the user fees applicable to NYSE MKT OpenBook and NYSE MKT Trades and has long been used by the Exchange in order to reduce the price of data to Non-Professional Users and make it more broadly available.¹⁶ Offering the NYSE MKT

¹⁴ There are no Redistribution fees charged for NYSE MKT OpenBook or Redistribution or User fees charged for NYSE MKT Order Imbalances.

¹⁵ NYSE Arca charges a \$3,000 per month redistribution fee for the NYSE Arca Integrated Feed. See Securities Exchange Act Release No. 66128 (Jan. 10, 2012), 77 FR 2331 (Jan. 17, 2012) (SR-NYSEArca-2011-96). Distributors of a NASDAQ listed security depth entitlements pay a Monthly External Distributor Fee of \$2,500. See NASDAQ Rule 7019(b).

¹⁶ See e.g., Securities Exchange Act Release No. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013)

⁸ The second sentence of endnote 2 to the Fee Schedule refers to a late fee for the Non-Display Use Declarations due September 1, 2014 that have not been submitted by July 1, 2015. This sentence is not applicable to the NYSE MKT Integrated Feed because NYSE MKT Integrated Feed was not available as of the September 1, 2014 due date and because data recipients of the NYSE MKT Integrated Feed will have to complete and submit a Non-Display Declaration before they can receive the feed. The Exchange proposes to modify the second sentence so that it applies only to NYSE MKT OpenBook, NYSE MKT BBO, NYSE MKT Trades and NYSE MKT Order Imbalances and not to the NYSE MKT Integrated Feed. The Exchange proposes to modify the third sentence so that it is clear that it applies to all market data products, including the NYSE MKT Integrated Feed, to which Non-Display Use fees apply.

⁹ See Fee Schedule.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4), (5).

Integrated Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

The Exchange believes the proposed Non-Display Use fees are reasonable, equitable and not unfairly discriminatory because they reflect the value of the data to the data recipients in their profit-generating activities and do not impose the burden of counting non-display devices. After gaining further experience with the non-display fee structure, the Exchange believes that the proposed Non-Display Use fees reflect the significant value of the non-display data to data recipients, which purchase such data on an entirely voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. While some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually.

Data can be processed much faster by a non-display device than it can be by a human being processing information that he or she views on a data terminal. Non-display devices also can dispense data to multiple computer applications as compared with the restriction of data to one display terminal. While non-display data has become increasingly valuable to data recipients who can use it to generate substantial profits, it has become increasingly difficult for them and the Exchange to accurately count non-display devices. The number and type of non-display devices, as well as their complexity and interconnectedness,

have grown in recent years, creating administrative challenges for vendors, data recipients, and the Exchange to accurately count such devices and audit such counts. Unlike a display device, such as a Bloomberg terminal, it is not possible to simply walk through a trading floor or areas of a data recipient's premises to identify non-display devices. During an audit, an auditor must review a firm's entitlement report to determine usage. While display use is generally associated with an individual end user and/or unique user ID, a non-display use is more difficult to account for because the entitlement report may show a server name or Internet protocol ("IP") address or it may not. The auditor must review each IP or server and further inquire about downstream use and quantity of servers with access to data; this type of counting is very labor-intensive and prone to inaccuracies.

Market data technology and usage has evolved to the point where it is no longer practical, nor fair and equitable, to simply count non-display devices. The administrative costs and difficulties of establishing reliable counts and conducting an effective audit of non-display devices have become too burdensome, impractical, and non-economic for the Exchange, vendors, and data recipients. Indeed, some data recipients dislike the burden of having to comply with count-based audit processes, and the Exchange's non-display pricing policies are a direct response to such complaints as well as a further competitive distinction between the Exchange and other markets. The Exchange believes that the proposed fee structure for non-display use is reasonable, equitable, and not unfairly discriminatory in light of these developments.

The Non-Display Use fees for the NYSE MKT Integrated Feed are reasonable because they represent the extra value of receiving the data for Non-Display Use on an integrated basis. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using NYSE MKT Integrated Feed on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.¹⁷

The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of the NYSE MKT Integrated Feed and can correctly assess fees for the uses of the NYSE MKT Integrated Feed. The annual submission requirement is equitable and not unfairly discriminatory because it will apply to all users.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of NYSE MKT Integrated Feed, the Exchange needs to have current and accurate information about the use of NYSE MKT Integrated Feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations. The Non-Display Declaration Late Fee is equitable and not unfairly discriminatory because it will apply to all data recipients that choose to subscribe to the NYSE MKT Integrated Feed.

In addition, the proposed fees are reasonable when compared to fees for comparable products, including the NYSE Arca Integrated Feed,¹⁸ offered by the Exchange's affiliate, NYSE Arca and NASDAQ TotalView-Itch,¹⁹ offered by The NASDAQ Stock Market, Inc. ("NASDAQ"). Specifically, the fees for NYSE Arca Integrated Feed, which like

models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.").

¹⁸ See NYSE Arca Integrated Feed, <http://www.nyxdata.com/page/1084> (last visited June 8, 2015)(data feed that provides a unified view of events, in sequence as they appear on the NYSE Arca matching engine, including depth of book, trades, order imbalance data, and security status messages).

¹⁹ See NASDAQ TotalView-ITCH, <http://www.nasdaqtrader.com/Trader.aspx?id=Totalview2> (last visited June 8, 2015)(displays the full order book depth for NASDAQ market participants and also disseminates the Net Order Imbalance Indicator (NOII) for the NASDAQNASDAQ [sic] Opening and Closing Crosses and NASDAQ IPO/Halt Cross).

(SR-NYSEMKT-2013-32) (establishing the \$1 Non-Professional User Fee (Per User) and \$5 Professional User Fee (Per User) for NYSE MKT OpenBook). See e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing nonprofessional fees for CTA data); NASDAQ Rules 7023(b), 7047.

¹⁷ See also Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR-CTA/CQ-2013-01) ("[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business

NYSE MKT Integrated Feed, includes depth of book, trades, and order imbalances data for the NYSE Arca market, and a security status message, consist of an Access Fee of \$3,000 per month, a Professional User Fee (Per User) of \$40 per month a Non-Professional User Fee (Per User) of \$20 per month, Non-Display Fees of \$7,000 per month for each of Categories 1, 2 and 3, and a Redistribution Fee of \$3,000 per month.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to the NYSE MKT Integrated Feed.

The Exchange also notes that the NYSE MKT Integrated Feed is entirely optional. The Exchange is not required to make the NYSE MKT Integrated Feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the NYSE MKT Integrated Feed. Firms that purchase the NYSE MKT Integrated Feed would do so for the primary goals of using it to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether the NYSE MKT Integrated Feed or any other similar products are attractively priced or not.

Firms that do not wish to purchase the NYSE MKT Integrated Feed at the new prices have a variety of alternative market data products from which to choose,²⁰ or if the NYSE MKT Integrated Feed does not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use the NYSE MKT Integrated Feed. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.²¹ Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.²²

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission ("Commission") upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94-229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that "Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'" ²³

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically or offer any significant benefits.²⁴

proprietary market data feeds from all registered stock exchanges. See <http://www.iextrading.com/about/>.

²³ *NetCoalition*, 615 F.3d at 535.

²⁴ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

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. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice ("DOJ") (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges "compete head to head to offer real-time equity data products. These data products include the best bid

services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at <http://www.sec.gov/rules/concept/s72899/buck1.htm>.

²⁰ See *supra* notes 19–20.

²¹ See In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014).

²² For example, Goldman Sachs Execution and Clearing, L.P. disclosed in 2014 that it was not using proprietary market data in connection with Sigma X, its ATS. See response to Question E3, available at <http://www.goldmansachs.com/media-relations/in-the-news/current/pdf-media/gsec-order-handling-practices-ats-specific.pdf>. By way of comparison, IEX has disclosed that it uses

and offer of every exchange and information on each equity trade, including the last sale.”²⁵

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the “current market structure can be described as dispersed and complex” with “trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks” and “trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.”²⁶ More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is “intense” and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.²⁷

If an exchange succeeds in its competition for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting

quotes, order flow, and trade executions, then its market data products may be less desirable to customers using them in support of order routing and trading decisions in light of the diminished content; data products offered by competing venues may become correspondingly more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available NYSE MKT Integrated Feed unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE MKT Integrated Feed can provide value by sufficiently increasing revenues or reducing costs in the customer’s business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange’s platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a

trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange’s broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in April 2015, more than 80% of the transaction volume on each of NYSE MKT and NYSE MKT’s affiliates NYSE Arca and New York Stock Exchange LLC (“NYSE”) was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange’s revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.²⁸ The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.²⁹

²⁵ Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at <http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html>; see also Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11-cv-2280 (DC Dist.) ¶ 24 (“NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.”).

²⁶ Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7-02-10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. See <https://www.arcavision.com/Arcavision/arcalogin.jsp>.

²⁷ Mary Jo White, Enhancing Our Equity Market Structure, Sandler O’Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, “OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,” at 7–8.

²⁸ See Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR-NASDAQ–2014–045) (“[A]ll of the exchange’s costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.”). See also Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR-NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR-NASDAQ–2010–111).

²⁹ See generally Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (“It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization ("SRO") markets, as well as various forms of ATSs, including dark pools and electronic communication networks ("ECNs"), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge

equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary."'). This is not new economic theory. See, e.g., F. W. Taussig, "A Contribution to the Theory of Railway Rates," *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) ("Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results."').

relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS Global Markets ("BATS") and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.³⁰ In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE MKT Integrated Feed, competitors offer close substitute products.³¹ Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data

products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, REDIBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In setting the proposed fees for the NYSE MKT Integrated Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, and continued availability of the Exchange's separate data feeds at a lower price, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ³² of the Act and subparagraph (f)(2) of Rule 19b-4 ³³

³² 15 U.S.C. 78s(b)(3)(A).

³³ 17 CFR 240.19b-4(f)(2).

³⁰ This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint product.

³¹ See *supra* notes 19–20.

thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)³⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2015-95 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-NYSEMKT-2015-95. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2015-95, and should be submitted on or before December 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Brent J. Fields,
Secretary.

[FR Doc. 2015-30480 Filed 11-30-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76519; File No. SR-FINRA-2015-051]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Tier Size Pilot of FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

November 24, 2015.

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 November 23, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size

Requirements for OTC Equity Securities) to extend the Tier Size Pilot, which currently is scheduled to expire on December 11, 2015, until June 10, 2016.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the "Rule") to extend, until June 10, 2016, the amendments set forth in File No. SR-FINRA-2011-058 ("Tier Size Pilot" or "Pilot"), which currently are scheduled to expire on December 11, 2015.⁴

The Tier Size Pilot was filed with the SEC on October 6, 2011,⁵ to amend the minimum quotation sizes (or "tier sizes") for OTC Equity Securities.⁶ The goals of the Pilot were to simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants. During the course of the pilot, FINRA collected and provided to the SEC specified data with

⁴ See Securities Exchange Act Release No. 75639 (August 7, 2015), 80 FR 48615 (August 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-028); see also Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR-FINRA-2011-058, as amended).

⁵ See Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR-FINRA-2011-058).

⁶ "OTC Equity Security" means any equity security that is not an "NMS stock" as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. See FINRA Rule 6420.

³⁴ 15 U.S.C. 78s(b)(2)(B).

³⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

which to assess the impact of the Pilot tiers on market quality and limit order display.⁷ On September 13, 2013, FINRA provided to the Commission an assessment on the operation of the Tier Size Pilot utilizing data covering the period from November 12, 2012 through June 30, 2013.⁸ As noted in the 2013 Assessment, FINRA believed that the analysis of the data generally showed that the Tier Size Pilot had a neutral to positive impact on OTC market quality for the majority of OTC Equity Securities and tiers; and that there was an overall increase of 13% in the number of customer limit orders that met the minimum quotation sizes to be eligible for display under the Pilot tiers. In the 2013 Assessment, FINRA recommended adopting the tiers as permanent, but extended the pilot period to allow more time to gather and analyze data after the November 12, 2012 through June 30, 2013 assessment period.⁹ On January 29, 2015, FINRA further extended the Pilot period to permit FINRA and the Commission to consider the implications of the data collected since June 30, 2013.¹⁰ FINRA has reviewed this post-June 30, 2013 data, and believes that the impact described in the 2013 Assessment has continued to hold (and has improved in certain areas).

The purpose of this filing is to extend the operation of the Tier Size Pilot until June 10, 2016, to provide FINRA with additional time to finalize its recommendation with regard to the Tier Size Pilot.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be December 11, 2015.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.¹² Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the extension of the Tier Size Pilot until June 10, 2016, is consistent with the Act in that it would provide the Commission and FINRA with additional time to determine whether the pilot tiers should be made permanent.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such

action is consistent with the protection of investors and the public interest.

FINRA 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 waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. Therefore, the Commission designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-051 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-FINRA-2015-051. 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

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ FINRA ceased collecting Pilot data for submission to the Commission on February 13, 2015.

⁸ The assessment is part of the SEC's comment file for SR-FINRA-2011-058 and also is available on FINRA's Web site at: <http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615> ("Pilot Assessment").

⁹ See Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-049).

¹⁰ See Securities Exchange Act Release No. 74251 (February 11, 2015), 80 FR 8741 (February 18, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-002).

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78o-3(b)(11).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-FINRA-2015-051 and should be submitted on or before December 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-30413 Filed 11-30-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76520; File No. SR-BX-2015-071]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees and Rebates Related to BX Price Improvement Auction (PRISM)

November 24, 2015.

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 November 12, 2015, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Pricing at Chapter XV, Section 2, entitled "BX Options Market—Fees and Rebates," which governs pricing for BX members using the BX Options Market ("BX Options"). The Exchange proposes to adopt new subsection (5) to add fees and rebates for BX Price Improvement Auction ("PRISM"), which is a mechanism for price improvement on BX Options ("Price Improvement Mechanism").

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on November 16, 2015.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 Chapter XV, Section 2 to adopt new subsection (5) to add fees and rebates for PRISM.

Effective on or about November 16, 2015, BX Options is introducing PRISM, which is codified in BX Chapter VI, Section 9 (also known as the "PRISM Rule").³ PRISM is a Price Improvement

Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a 'stop price' and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may respond to a PRISM Auction,⁴ the duration of which will be set at 200 milliseconds.⁵ PRISM includes auto-match functionality in which a Participant (an "Initiating Participant") may electronically submit for execution an order it represents as agent on behalf of a Public Customer,⁶ Professional customer, broker dealer, or any other entity ("PRISM Order") against principal interest or against any other order it represents as agent (an "Initiating Order") provided it submits the PRISM Order for electronic execution into the PRISM Auction pursuant to Chapter VI, Section 9.⁷ The PRISM Rule describes the circumstances under which an Initiating Participant may initiate an Auction. A PRISM Order that is for a Non-Customer (account of a broker-dealer or any other person or entity that is not a Public Customer) is always required to improve the same side of the BX BBO even if there is no resting limit order on the book. PRISM Orders that do not comply with the

remove Price Improving and Post-Only Orders and removes the ability to submit Price Improving and Post-Only Orders into the auction. In the event the Exchange determines to amend its order types to allow the entry of non-displayed order types, e.g. Price Improving or Post-Only Orders, the Exchange will file a proposed rule change pursuant to Section 19(b)(2) with the Commission to seek approval for such rule change. *See also* Options Technical Update #2015-6.

⁴ PRISM Auction eligibility requirements and the early conclusion of the PRISM Auction are, with certain other PRISM features, subject to a pilot program scheduled to expire July 18, 2016. *See* BX Chapter VI, Section 9.

⁵ Other exchanges that have price improvement auctions have developed different durations. *See, e.g.,* CBOE Rule 6.74A(b)(1)(C) (CBOE's AIM auction has a duration of one second); and BOX Rule 7150(f)(1) (BOX's PIP auction has a duration of one hundred milliseconds, commencing on the dissemination of the PIP broadcast).

⁶ For purposes of the PRISM Rule in Chapter XV, Section 2, a Public Customer order does not include a Professional order, and therefore a Professional would not be entitled to Public Customer priority as described herein. A Public Customer means a person that is not a broker or dealer in securities. *See* BX Options Rules at Chapter I, Section 1(a)(50). A Public Customer order does not include a Professional order for purposes of BX Rule at Chapter VI, Section 10(a)(C)(1)(a), which governs allocation priority. A "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants. *See* BX Rules at Chapter I, Section 1(a)(49).

⁷ BX PRISM will only conduct an auction for simple (non-complex) Orders.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* Securities Exchange Act Release Nos. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (approval order) ("PRISM Approval"); and 75827 (September 3, 2015), 80 FR 54601 (September 10, 2015) (SR-BX-2015-032) ("PRISM Filing"). In the PRISM Approval the Exchange noted that it will file a rule change separately with the Commission to remove Price Improving and Post-Only Order types from its Rules. The Exchange will not commence offering BX PRISM until such time as it has an effective and operative rule in place from the Commission to

requirements set forth in the PRISM Rule are not eligible to initiate an Auction and will be immediately cancelled. Also, PRISM Orders submitted at or before the opening of trading are not eligible to initiate an Auction and will be rejected. PRISM Orders submitted during the final two seconds of the trading session in the affected series are not eligible to initiate an Auction and will be immediately cancelled. Finally, an Initiating Order may not be a solicited order for the account of any BX Options Market Maker assigned in the affected series.⁸

The Exchange believes that the PRISM Auction will be beneficial to market participants, and in particular will encourage BX Market Makers⁹ to quote at the National Best Bid or Offer (“NBBO”) with additional size and thereby result in tighter and deeper markets, resulting in more liquidity on BX. Specifically, by offering BX Market Makers the ability to receive priority in the proposed allocation during the PRISM Auction up to the size of their quote, a BX Market Maker will be encouraged to quote with additional size outside of the PRISM Auction at the best and most aggressive prices. BX believes that this incentive may result in a narrowing of quotes and thus further enhance BX’s market quality. BX believes that PRISM will encourage BX Market Makers to compete vigorously to provide the opportunity for price improvement in a competitive auction process.¹⁰

This proposal establishes the fee and rebate structure for PRISM (per contract), in particular two new fees and one new rebate. These would apply to Customers,¹¹ BX Options Market Makers,¹² and Non-Customers:

Change 1. The Exchange proposes to establish fees for Submitted PRISM Order¹³ (Agency Order and Contra-Side Order).

Change 2. The Exchange proposes to establish fees for Responded to PRISM Auction¹⁴ (Penny Classes¹⁵ and non-Penny Classes).

Change 3. The Exchange proposes to establish rebates for PRISM Order Traded With PRISM Response.¹⁶

Each specific change is described in detail below.

Change 1—Fees for Submitted PRISM Order: Agency Order and Contra-Side Order

For Submitted PRISM Order the Exchange is proposing to establish fees for Agency Order (per contract), and fees for Contra-Side Order (per contract). Currently, the Exchange has no such fees.

The fees for Submitted PRISM Order will range from \$0.00 to \$0.30 for Agency Order. The fees for Submitted PRISM Order will range from \$0.00 to \$0.05 for Contra-Side Order. Specifically, for Submitted PRISM Order proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be no fee (\$0.00) for Agency Order and no fee (\$0.00) for Contra-Side Order. Subsection (5) will state that for BX Options Market Maker there will be a \$0.30 fee for Agency Order and a \$0.05 fee for Contra-Side Order. Subsection (5) will state that for Non-Customer there will be a \$0.30 fee for Agency Order and a \$0.05 fee for Contra-Side Order.

Change 2—Fees for Responded to PRISM Auction: Penny Classes and Non-Penny Classes

For Responded to PRISM Auction the Exchange is proposing to establish fees for Penny Classes (per contract), and fees for non-Penny Classes (per

contract). Currently, the Exchange has no such fees.

The fees for Responded to PRISM Auction will be \$0.49 (per executed contract) for Penny Classes. The fees for Responded to PRISM Auction will be \$0.94 (per executed contract) for non-Penny Classes. Specifically, for Responded to PRISM Auction proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be a \$0.49 fee for Penny Classes and a \$0.94 fee for non-Penny Classes. Subsection (5) will state that for BX Options Market Maker there will be a \$0.49 fee for Penny Classes and a \$0.94 fee for non-Penny Classes. Subsection (5) will state that for Non-Customer there will be a \$0.49 fee for Penny Classes and a \$0.94 fee for non-Penny Classes.

Change 3—Rebates for PRISM Order Traded With PRISM Response: Penny Classes and Non-Penny Classes

For PRISM Order Traded with PRISM Response the Exchange is proposing to establish rebates for Penny Classes (per contract), and rebates for non-Penny Classes (per contract). Currently, the Exchange has no such rebates. These rebates would be applied in conjunction with the Agency Order fees that the Submitted PRISM Order is assessed.

The rebates for PRISM Order Traded with PRISM Response will range from \$0.00 to \$0.35 for Penny Classes. The rebates for PRISM Order Traded with PRISM Response will range from \$0.00 to \$0.70 for non-Penny Classes. Only Customers will get rebates. Specifically, for PRISM Order Traded with PRISM Response proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be a \$0.35 rebate for Penny Classes and a \$0.70 rebate for non-Penny Classes. Subsection (5) will state that for BX Options Market Maker and for Non-Customer there will be no rebate (\$0.00) for Penny Classes and no rebate (\$0.00) for non-Penny Classes.

Example 1

A Customer PRISM Agency Order in a Penny Class (one contract) trades against a PRISM Response in a Penny Class (one contract). The Customer Agency Order is assessed a fee of \$0.00 and given a rebate of \$0.35 for a total rebate of \$0.35 (fee \$0.00 + rebate \$0.35). The market participant that Responded to PRISM Auction will be assessed a fee of \$0.49.

Example 2

A Non-Customer PRISM Agency Order in a Penny Class (one contract) trades against a PRISM Response in a Penny Class (one contract). The Non-Customer Agency Order is assessed a fee of \$0.30 and given a rebate of \$0.00 for a total fee of \$0.30 (fee \$0.30 +

⁸ See Chapter VI, Section 9(i)(C) through (G).

⁹ BX Options Market Makers may also be referred to as “Market Makers”. The term “BX Options Market Maker” means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

¹⁰ For purposes of brevity, the Exchange does not endeavor to describe all the nuances of PRISM within this fee proposal. Additional detail regarding PRISM can be found in PRISM Approval, PRISM Filing, and PRISM FAQs at <http://nasdaqtrader.com/content/products/services/trading/PRISMFAQs.pdf>.

¹¹ The term “Customer” means a Public Customer or a broker-dealer. BX Chapter 1, Section 1(a)(22). The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

¹² BX Options Market Makers may also be referred to as “Market Makers”. The term “BX Options Market Maker” or (“M”) means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also

remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

¹³ This relates to a market participant submitting an order into the PRISM auction.

¹⁴ This relates to a market participant responding to a PRISM Auction.

¹⁵ Penny Classes are options listed pursuant to the Penny Pilot, which was established in June 2012 and extended in 2015. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR-BX-2015-037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

¹⁶ This relates to a market participant submitting a PRISM Order pursuant to a PRISM Auction and the PRISM Order trading with PRISM Response.

rebate \$0.00). The market participant that Responded to PRISM Auction will be assessed a fee of \$0.49.

As proposed, Chapter XV, Section 2 subsection (5) will read as follows:

(5) Fees and rebates for BX Price Improvement Auction (“PRISM”)

FEES AND REBATES (PER CONTACT)

Type of market participants	Submitted PRISM order fee		Responded to PRISM auction fee		PRISM order traded with PRISM response rebate	
	Agency order	Contra-side order	Penny classes	Non-penny classes	Penny classes	Non-penny classes
Customer	\$0.00	\$0.00	\$0.49	\$0.94	\$0.35	\$0.70
BX Options Market Maker	0.30	0.05	0.49	0.94	0.00	0.00
Non-Customer	0.30	0.05	0.49	0.94	0.00	0.00

BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order Traded with PRISM Response. The Agency Order fee for Submitted PRISM Order will be applicable to any contract(s) for which a rebate is provided for PRISM Order Traded with PRISM Response.

The Exchange is adopting these fees and rebates at this time because it believes that they will allow the Exchange to recoup some of the costs associated with PRISM, which promotes price improvement to the benefit of market participants, while also incentivizing the use of PRISM.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁷ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹ Likewise, in *NetCoalition v. NYSE Arca, Inc.*, 615 F.3d 525 (D.C. Cir. 2010), the DC Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²⁰ As

the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²¹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²² Although the Court and the SEC were discussing the cash equities markets, the Exchange believes that, as discussed above, these views apply with equal force to the options markets.

The Exchange’s proposal establishes fees and rebates regarding PRISM, which promotes price improvement to the benefit of market participants. The Exchange believes that PRISM will encourage market participants, and in particular BX Market Makers, to compete vigorously to provide the opportunity for price improvement in a competitive auction process. The Exchange believes that its proposal will allow the Exchange to recoup costs associated with PRISM while also incentivizing its use.

Change 1—Fees for Submitted PRISM Order: Agency Order and Contra-Side Order

For Submitted PRISM Order, establishing that there will be no fee for Customer for Agency Order, while

establishing a \$0.30 fee per contract for BX Options Market Maker for Agency Order and a \$0.30 fee per contract for Non-Customer for Agency Order, is reasonable because it encourages the desired Customer behavior. The fee is also reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. For Submitted PRISM Order, establishing no Customer fee, while establishing a \$0.05 fee per contract for BX Options Market Maker for Contra-Side Order and a \$0.05 fee per contract fee for Non-Customer for Contra-Side Order, is reasonable because it encourages the desired Customer behavior. The fee is also reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

For Submitted PRISM Order, establishing no fee for Customer (Agency Order and Contra-Side Order) and a fee for BX Market Maker and Non-Customer (Agency Order and Contra-Side Order) is equitable and not unfairly discriminatory. This is because the Exchange’s proposal to assess such fee will apply the same to all similarly situated participants.

Change 2—Fees for Responded to PRISM Auction: Penny Classes and Non-Penny Classes

For Responded to PRISM Auction, establishing that there will be a \$0.49 fee per contract for Customer for Agency Order, and the same fee for BX Options Market Maker and for Non-Customer for Agency Order, is reasonable because the

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

¹⁹ Exchange Act Release No. 34–51808 (June 9, 2005) (“Regulation NMS Adopting Release”).

²⁰ See *NetCoalition*, 615 F.3d at 534.

²¹ *Id.*, at 537.

²² *NetCoalition I*, 615 F.3d at 539 (quoting *ArcaBook Order*, 73 FR at 74782–74783).

associated revenue will allow the Exchange to maintain and enhance its services.

For Responded to PRISM Auction, establishing that there will be a \$0.94 fee per contract for Customer for Contra-Side Order, and the same fee for BX Options Market Maker and for Non-Customer for Contra-Side Order, is reasonable because the associated revenue will allow the Exchange to maintain and enhance its services.

For Responded to PRISM Auction, establishing a fee for Customer, BX Market Maker and Non-Customer (Agency Order and Contra-Side Order) is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess such fee will apply the same to all similarly situated participants.

Change 3—Rebates for PRISM Order Traded With PRISM Response: Penny Classes and Non-Penny Classes

For PRISM Order Traded with PRISM Response, establishing that there will be no rebate for BX Options Market Maker and Non-Customer for Penny Classes, while establishing a \$0.35 rebate per contract for Customer for Penny Classes and a \$0.70 rebate per contract for Customer for non-Penny Pilot Classes, is reasonable because it encourages the desired Customer behavior. The rebate is also reasonable because paying the rebate only to Customers will allow the Exchange to maintain and enhance its services. For PRISM Order Traded with PRISM Response, establishing that there will be no rebate for BX Options Market Maker and Non-Customer for non-Penny Classes, while establishing a \$0.70 rebate per contract for Customer for non-Penny, is reasonable because it encourages the desired Customer behavior. The rebate is also reasonable because paying the rebate only to Customers will allow the Exchange to maintain and enhance its services.²³ Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

For PRISM Order Traded with PRISM Response, establishing a rebate for Customer (Penny Classes and non-Penny Classes) and no rebate for BX

Market Maker and Non-Customer (Penny Classes and non-Penny Classes) is equitable and not unfairly discriminatory. This is because the Exchange's proposal to pay such rebate will apply the same to all similarly situated participants. The Exchange is adopting the proposed fees and rebates at this time because it believes that the associated revenue will allow it to continue and enhance PRISM, which is beneficial to market participants.

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. Specifically, the Exchange does not believe that its proposal to establish fees and rebates for PRISM will impose any burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply establishing rebates and fees in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee

changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the charges assessed and credits available to member firms in respect of PRISM do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain PRISM, which has the potential to result in more efficient, price improved executions to the benefit of market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁴ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

²³ As noted, such rebate would be applied in conjunction with any Agency Order fee that the Submitted PRISM Order is assessed.

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-BX-2015-071 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-BX-2015-071. 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-BX-2015-071 and should be submitted on or before December 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-30386 Filed 11-30-15; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 9366]

60-Day Notice of Proposed Information Collection: Smart Traveler Enrollment Program

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to February 1, 2016.

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

- **Web:** Persons with access to the Internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: DOS-2015-0050" in the Search field. Then click the "Comment Now" button and complete the comment form.

- **Email:** RiversDA@state.gov.
- **Regular Mail:** Send written comments to: U.S. Department of State, CA/OCS/PMO, SA-17, 10th Floor, Washington, DC 20036.
- **Fax:** 202-736-9111.
- **Hand Delivery or Courier:** U.S. Department of State, CA/OCS/PMO, 600 19th St. NW., 10th Floor, Washington, DC 20036.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PMO), U.S. Department of State, SA-17, 10th Floor, Washington, DC 20036 or at RiversDA@state.gov.

SUPPLEMENTARY INFORMATION:

- **Title of Information Collection:** Smart Traveler Enrollment Program.
- **OMB Control Number:** 1405-0152.
- **Type of Request:** Revision of a Currently Approved Collection.
- **Originating Office:** CA/OCS/PMO.
- **Form Number:** DS-4024, DS-4024e.

- **Respondents:** United States Citizens and Nationals.

- **Estimated Number of Respondents:** 1,010,389.

- **Estimated Number of Responses:** 1,010,389.

- **Average Time per Response:** 20 minutes.

- **Total Estimated Burden Time:** 336,796 hours.

- **Frequency:** On Occasion.
- **Obligation to Respond:** Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The STEP makes it possible for U.S. nationals to register on-line from anywhere in the world. In the event of a family emergency, natural disaster or international crisis, U.S. embassies and consulates rely on this registration information to provide critical information and assistance to them. 22 U.S.C. 2715 is one of the main legal authorities that deem the usage of this form necessary.

Methodology

99% of responses are received via electronic submission on the Internet. The service is available on the Department of State, Bureau of Consular Affairs Web site <http://travel.state.gov> at <https://step.state.gov/step/>. The paper version of the collection permits respondents who do not have Internet access to provide the information to the U.S. embassy or consulate by fax, mail or in person.

²⁵ 17 CFR 200.30-3(a)(12).

Dated: November 6, 2015.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Overseas Citizen Services, Department of State.

[FR Doc. 2015-30496 Filed 11-30-15; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Safety Advisory 2015-06]

Locomotive Alerter Resetting Without Direct Engineer Action

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT)

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2015-06 to notify freight railroads of the circumstances of a head-on collision at Hoxie, AR, and the risks automated inputs that reset alerter warning timing cycles pose. A small number of Union Pacific Railroad (UP) locomotives were equipped with alerters that the horn sequencer reset without direct engineer action, reducing the alerters' effectiveness. UP has appropriately modified its locomotives to resolve the issue and FRA is not aware of any other locomotives equipped with alerters that automatically reset without direct engineer action. However, all freight railroads should review the operation of their locomotives equipped with alerters, and modify them as necessary, to ensure no system resets the alerter warning timing cycle without direct engineer action.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Fairbanks, Staff Director, Motive Power and Equipment Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493-6322; or Mr. Michael Masci, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493-6037.

SUPPLEMENTARY INFORMATION:

Background, Including Accident Summary and Regulatory Context

Locomotive Alerter Functioning

A locomotive alerter is a safety feature installed on a locomotive to ensure the locomotive engineer remains alert while operating the locomotive. The alerter monitors the engineer's interactions with the locomotive and initially produces an alarm in the cab when no control actions are taken to reset the

alerter warning timing cycle within a certain length of time. Because over-the-road locomotive operations often do not require frequent engineer actions (control inputs), alerter systems are also equipped with a manual reset button that allows the engineer to reset the warning timing cycle directly. If no control action or manual reset occurs after the alarm sounds, the alerter system will initiate a penalty brake application and reduce locomotive power to idle to stop the locomotive.

Horn activation is a locomotive control action that will reset the alerter warning timing cycle, but when automated (using a horn sequencer) it can also interfere with the alerter's normal functionality. On many locomotives, there are two distinct ways to activate the horn: (1) During ordinary operation, the engineer holds a manual horn controller in the "on" position to activate it, and then releases the controller to silence it; and (2) when approaching a crossing, the engineer activates a separate switch (often a foot pedal) to initiate an automatic horn sequencer (sounding the long-long-short-long sequence FRA's regulations require for public highway-rail grade crossings, *see* Title 49 Code of Federal Regulations (CFR) 222.21(a)). The simple presence of a horn sequencer is not a safety issue. The horn sequencer is a convenient tool, because of the frequent need to sound the long-long-short-long horn sequence for public highway-rail grade crossings. However, when the horn sequencer enables the alerter warning timing cycle to reset without direct engineer action, it acts to delay the alerter's safety functionality and reduce its effectiveness, which could have serious safety consequences.

Accident Summary and Testing

The head-on collision at Hoxie highlights the importance of this issue.¹ On August 17, 2014, at approximately 2:28 a.m. (CDT), a southbound UP freight train passed an approach and then a stop indication and collided with a northbound UP freight train while transitioning from double-main track to single-main track at Control Point Y 229 on the UP Hoxie Subdivision in Hoxie. The collision resulted in two crewmember fatalities. The event recorder on the lead southbound

locomotive was destroyed, but the event recorder and a camera on a trailing locomotive enabled the National Transportation Safety Board (NTSB) to recreate certain key events leading up to the moment of impact. Four minutes and 53 seconds before impact, the engineer activated the horn sequencer, which continued to cycle for 4 minutes and 6 seconds, at which time he deactivated it after passing a grade crossing at Hickory (Milepost (MP) 227.84)). During the time the horn sequencer was operating, the engineer made one throttle change, but took no action after passing an approach signal at MP 227.4.

Given the recorded speed of the train, there were two intervals during horn sequencer operation when the alerter could have sounded, alerted the crew, and initiated a penalty brake application if no response was given. The evidence available does not rule out the possibility that the engineer was manually resetting the alerter on the lead locomotive. However, if the locomotive was set up the same as the trailing locomotive, which is likely, the alerter would not have reached its intended timing cycle limit before the actual impact, regardless whether the automatic activation of the horn sequencer reset the timing cycle. The interval from deactivation of the horn sequencer to impact was 44 seconds, or 9 seconds shorter than the alerter warning timing cycle interval of 53 seconds at the impact speed of 45 mph, so no alarm or penalty brake application could have occurred in this interval.

FRA cannot determine whether an alerter activation would have prevented the Hoxie collision. Yet, if the alerter had alarmed during the minutes leading up to the collision, it could have provided an opportunity to prevent or mitigate this accident. FRA tests of another locomotive in the same series verified that the horn sequencer installed in these locomotives reset the alerter warning timing cycle after each sounding of the horn, even though all but the first horn blast were initiated automatically. This series of 40 locomotives, which were built over 20 years ago, were factory-equipped with a stand-alone horn sequencer, wired to reset the alerter with every sounding of the horn, including the sounding of the horn by the horn sequencer.

UP has appropriately modified this series of locomotives to address this issue. FRA did not specifically regulate the manner of the alerter's interaction with the horn sequencer when the locomotives were manufactured. As discussed below, freight locomotives of

¹ This section provides a brief summary of the circumstances surrounding the collision, based on the NTSB and FRA preliminary findings to date. The probable cause and contributing factors, if any, have not yet been established. Therefore, nothing in this safety advisory is intended to attribute a cause to this incident, or place responsibility for this accident on the acts or omissions of any person or entity.

this age will not fall under FRA's alerter regulations until January 1, 2017.

FRA Regulations

FRA safety regulations addressing alerters on freight locomotives are found at 49 CFR 229.140. *See* 77 FR 21312 (April 9, 2012). Section 229.140 requires all controlling locomotives that are placed in service for the first time on or after June 10, 2013, and operated at speeds in excess of 25 mph to be equipped with an alerter. This section also requires all controlling locomotives operated at speeds in excess of 25 mph on or after January 1, 2017, to be equipped with an alerter, regardless of when they were first placed in service.

This section prohibits automatic systems from resetting the locomotive alerter. Specifically, 49 CFR 229.140(b)(3) requires movement of the engineer's horn activation handle to reset the alerter warning timing cycle. Using a horn sequencer to reset the alerter with each sounding of the horn (one for each of the long-long-short-long sequence) does not satisfy 49 CFR 229.140(b)(3), because all but the first horn blast are initiated automatically. This section requires engineers to take direct action, either by operation of certain controls or actuation of the manual reset, to restart the alerter warning timing cycle. Further, under 49 CFR 229.140(e), the alerter must be functioning and operating as intended when the locomotive is used. FRA addresses failures to comply with these regulatory requirements through inspections and enforcement activities.

Recommended Action: In light of the discussion above, and because many older locomotives, including locomotives from smaller manufacturers and remanufacturers are still in service, FRA recommends that all freight railroads check the operation of their locomotives equipped with alerters to ensure that no system resets the alerter warning timing cycle without direct engineer action. This review should include, but not be limited to, the operation of horn sequencer circuitry, if equipped. Railroads should modify any such systems they find to ensure that no system interferes with the alerter warning timing cycle. In particular, FRA recommends that railroads that may have installed alerters prior to June 10, 2013, review the design of those systems and modify them as necessary, before January 1, 2017, to ensure safety and compliance with 49 CFR 229.140(b)(3).

Issued in Washington, DC, on November 25, 2015.

Patrick T. Warren,

Deputy Associate Administrator for Safety.

[FR Doc. 2015-30469 Filed 11-30-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35966]

Martin Marietta Materials, Inc.— Acquisition of Control Exemption— Rock & Rail LLC

AGENCY: Surface Transportation Board, DOT.

ACTION: Correction to notice of exemption.

On October 9, 2015, Martin Marietta Materials, Inc. (MMM), a noncarrier, filed a verified notice of exemption to acquire control of Rock & Rail, Inc. (RRI), a Class III railroad. On October 23, 2015, notice of the exemption was served and published in the **Federal Register** (80 FR 64,491). The exemption became effective November 8, 2015.

On November 4, 2015, MMM filed a letter with the Board advising that the notice requires clarification. According to MMM, RRI also owns and operates rail lines in Colorado Springs, Colo.¹ MMM states that all of the rail lines owned and operated by RRI are in Colorado and do not connect, nor are there plans to connect, with the railroads controlled by MMM. MMM also clarifies that the correct legal name of RRI is "Rock & Rail LLC." This notice corrects the information described above and the case caption. All other information in the notice is correct.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: November 24, 2015.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Tia Delano,

Clearance Clerk.

[FR Doc. 2015-30341 Filed 11-30-15; 8:45 am]

BILLING CODE 4915-01-P

¹ MMM states that RRI obtained Board authority in *Rock & Rail, Inc.—Acquis. and Operation Exemption—Railroad Lines near Kelker, El Paso City., Colo.*, FD 33764 (STB served June 25, 1999).

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: TreasuryDirect System

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4-A, Parkersburg, WV 26106-1328, or bruce.sharp@fiscal.treasury.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Ron Lewis; 200 Third Street Room 515, Parkersburg, WV 26106-1328, or ron.lewis@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: TreasuryDirect.

OMB Number: 1535-0138.

Abstract: The information collected in the electronic system is requested to establish a new account and process any associated transactions.

Current Actions: Extension of a previously approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2.06 million.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 97,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Dated: November 24, 2015.

Bruce A. Sharp,
Bureau Clearance Officer.

[FR Doc. 2015-30344 Filed 11-30-15; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Update to the List of Medical Supplies

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice, publication of updated list of items defined as medical supplies.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an updated list of items defined as medical supplies under section 560.530(a)(3)(ii) of the Iranian Transactions and Sanctions Regulations, 31 CFR part 560, and generally licensed for exportation or reexportation to Iran pursuant to section 560.530(a)(3)(i), to include additional items.

DATES: *Effective Date:* November 2, 2015.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202-622-2480, Assistant Director for Regulatory Affairs, tel.: 202-622-4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202-622-2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The text of the List of Medical Supplies and additional information concerning OFAC are available from OFAC's Web site (www.treasury.gov/ofac). Certain general information

pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202-622-0077.

Background

On October 22, 2012, OFAC published a final rule in the **Federal Register** (77 FR 64664) that, among other things, amended section 560.530 of the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), to add a general license, in new paragraph (a)(3), authorizing the exportation or reexportation of medicine and basic medical supplies to Iran. The term "basic medical supplies" was defined to mean those medical devices, as defined in paragraph (e)(3) of section 560.530, that were included on the "List of Basic Medical Supplies" on the OFAC Web site (www.treasury.gov/ofac) on the Iran Sanctions page, but not including replacement parts. On the same day, OFAC also posted the List of Basic Medical Supplies on its Web site (78 FR 54731). OFAC updated the List of Basic Medical Supplies on its Web site on July 25, 2013, and subsequently published notice of the update in the **Federal Register** (78 FR 54731).

On April 7, 2014, OFAC published a final rule in the **Federal Register** (79 FR 18990) that, among other things, updated the definition of "basic medical supplies" to exclude the word "basic" and make related conforming changes. Accordingly, the rule further provided that the "List of Basic Medical Supplies" published on the OFAC Web site and in the **Federal Register** would now be called the "List of Medical Supplies."

As highlighted in the note to paragraph (a)(3)(ii) of section 560.530 of the ITSR, the List of Medical Supplies is maintained on OFAC's Web site and will be published in the **Federal Register**, as will any changes to the list. On November 2, 2015, OFAC updated the List of Medical Supplies on its Web site to read as follows:

GENERAL LICENSE 31 CFR 560.530(a)(3), Authorizing the Exportation or Reexportation of Medicine and Medical Supplies to Iran **List of Medical Supplies (Updated November 2, 2015)**

The list below comprises the medical supplies defined in 31 CFR 560.530(a)(3)(ii).

General Medical Equipment and Supplies

- Adhesive designed for human use
- Adhesive remover designed for human use

- Antiseptic wipes for human use (including alcohol, antimicrobial, benzalkonium, betadine, iodine, and witch hazel)
- Beds: Hospital beds, cribs, or bassinets; including mattresses, overlays, pillows, and bumpers
- Blood lancets
- Blood pressure monitors, gauges, cuffs, aneroids, or infusors
- Bottles (prescription)
- Cabinets: Medical supply or pharmaceutical
- Canes, crutches, walkers, rollators
- Capnographs
- Carts: medical, medical utility, medical supply, food service, or hospital laundry carts
- Catheters—all sizes and types; including kits
- Chairs: exam, treatment, surgical, dental, or phlebotomy
- Clinical basins, bowls, pans, urinals, bags, and buckets; and holding devices for such items
- Clinical swabs, applicators, specimen collectors, sponges, pads, tongue depressors, wooden spoons, cotton balls, or cotton rolls
- Coils, guidewire
- Contraceptives (inter-uterine devices (IUDs), hormonal therapy methods, barrier methods), and condoms
- Continuous positive airway pressure (CPAP) systems and all components
- Ear plugs and muffs
- Ear syringes
- Ear wax removers
- Endoscopic devices including laryngoscopes, laparoscopes, anascopes, proctoscopes, arthroscopes, sinusscopes, dermatoscopes, ophthalmoscopes, sigmoidoscopes, otoscopes, retinoscopes, or colposcopes
- Floor mats: Safety, anti-fatigue or special-purpose medical floor mats
- Forceps
- Guidewires, all
- Human body or cadaver bags and shrouds
- Human body positioners including pads, wedges, cradles, pillows, rests, straps, supports, and holders
- Human specimen collectors and containers (e.g., urine, blood, tissue)
- Humidifiers
- Hydrocollator heating units
- IV sets, bags, and armboards
- Jars and containers designed for medical supplies and instruments less than 5 L internal volume
- Lights and lamps: Surgical, or medical exam, magnifying
- Limb prosthesis devices
- Manikins: Medical training, CPR
- Medical bags for medical supplies and equipment; including pre-packed bags
- Medical bandages, gauze, dressings, tape, swabs, sponges, and burn dressings

- Medical carafes, cups, containers and tumblers
- Medical casts, padding; and casting and removal equipment
- Medical defibrillators
- Medical diagnostic kits, point-of-care; including EAR99 reagents
- Medical flowmeters: Oxygen & air
- Medical labels, labellers, stickers, forms, charts, signage, tags, cards, tape, wrist bands, documents, brochures, and graphics
- Medical lavage systems
- Medical linens (e.g., blankets, sheets, pillow cases, towels, washcloths, drapes, covers)
- Medical penlights
- Medical pumps
- Medical scissors
- Medical tubing or hoses less than 2" diameter; including associated adaptors, connectors, caps, clamps, retainers, brackets, valves, washers, vents, stopcocks, or flow sensors; and peristaltic pumps with flowrates of less than 600 liters/hr for such tubing (Note: Does not include tubing made of butyl rubber or greater than 35% fluoropolymers)
- Medicine cups
- Monitor for glucose management
- Non-electronic patient medical record file systems and organizers
- Orthopedic supports, braces, wraps, shoes, boots, or pads
- Orthopedic traction devices and tables
- Otology sponges
- Oxygen apparatus, all
- Paraffin baths
- Patient heating and cooling devices: Pads, packs, bottles, bags, warmers, blankets, patches, lamps, bags
- Patient safety devices including vests, aprons, finger mitts, limb or body holders, jackets, belts, restraints, cuffs, straps, or protectors
- Patient transfer chairs, lifts, benches, boards, slides, discs, slings, and sheets
- Patient vital-sign monitoring devices
- Patient wheelchairs, chairs, gurneys, stretchers, mats, and cots
- Privacy screens and curtains
- Pulse oximeters
- Reflex hammers
- Refrigerator: Compartmental for morgues
- Safety poles, rails, handles, benches, grab bars, commode aids, and shower aids
- Scales, stadiometers, rulers, sticks, tapes, protractors, volumeters, gauges, or callipers designed for human measurement
- Single-use medical procedure trays and kits
- Speculums
- Spirometers

- Splints
- Stands: IV, instrument, solution, or hamper
- Stethoscopes
- Stools: Designed for clinical use
- Surgical sutures and staples; and removal kits
- Syringes, aspirators, cannulas, and needles—all sizes and types; including kits
- Tables: Operating, exam, therapy, overbed, treatment, medical utility, or medical instrument
- Telemetry pouches designed for human use
- Tents: Pediatric, aerosol, and mist
- Thermometers for measuring human body temperature
- Tourniquets
- Ventilator: Adult and tubing and accessories
- Warmers: Bottle, gel, lotion, or blanket

Anaesthesiology

- Air bags and tidal volume bags
- Air bellows
- Anaesthesia circuits
- Anaesthesia machines, vaporizers, nebulizers, and inhalers designed for individual human use
- Anaesthesia masks (including laryngeal)
- Anti-siphon equipment
- Block and epidural trays packaged for individual use
- Endotrach tubes
- Head straps and harnesses
- Hyperinflation systems
- In-line filters and cartridges, thermometers, CO₂ detectors, soda-lime canisters, and temperature and moisture exchangers (Note: Gas mask canisters, other than soda-lime canisters designed for anaesthesia systems, require a specific license)
- Intubation sets, probes and related equipment
- Anaesthesiometers
- Oral airways
- Peripheral nerve stimulators
- Anaesthesia pressure tubes and controllers
- Cardiopulmonary resuscitation (CPR) training manikins and lung bags
- Vibration dampening mounts

Apparel

- Medical gowns, scrubs, aprons, uniforms, lab coats, and coveralls; only those without integrated hoods
- Patient clothing including gowns, slippers, underpads, or undergarments
- Head or beard covers and nets
- Medical shoe and boot covers
- Surgical sleeve protectors
- Ventilated Safety eyeshields and goggles (does not include full face shield or indirectly-vented goggles)

- Disposable latex, nitrile, polyethylene, vinyl gloves/finger cots or other medical gloves
- Surgical face or dust masks (does not include masks with respirators)

Cardiology

- Ablation devices and accessories: Radio frequency
- Balloons extractor, retrieval
- Cardiac monitors: Implantable or external
- Cardiac pacemakers
- Cardiac programmers
- Cardiopulmonary oxygenation systems, devices, and monitors
- Coagulation machines
- Electrocardiography machines
- Filters: Arterial
- Grafts: Peripheral bypass
- Heart positioners: Surgical revascularization
- Heart valves: Surgical transcatheter (non-surgical)
- Inflation devices: Interventional

Dental Equipment and Supplies

- Bone graft matrices
- Dental and oral implants or devices
- Dental instrument cases, trays, mats or tray liners, racks, covers, wraps, stands, holders, stringers, or protectors
- Dental instruments—all types and sizes
- Denture and temporary oral device containers
- Dentures, crowns, molds, orthodontics, all
- Tooth and denture brushes
- Yankauers

Gynecology & Urology

- Bladder control pads, briefs, liners, underwear, pants and diapers
- Bladder scanners
- Enema sets
- Extracorporeal lithotripters
- Fecal/stool management devices, kits, and catheters
- Feminine hygiene products
- Pouches, urostomy

Inherited Preventative Care

- Genetic testing products

Laboratory

- Autoclaves (20 liters or smaller only) for medical instrument sterilization and accessories
- Automated blood culture systems
- Automated clinical chemistry analyzers for patient care
- Bench-top dry bath incubators
- Clinical immunoassay analyzers
- Clinical laboratory water baths less than 10 liter
- Coagulation analyzers
- Co-oximeters for haemoglobin analysis

- Electrolyte analyzers
- Flow cytometry accessories, reagents, and components
- Hematology analyzers
- Histology and cytology strainers and tissue baths
- Laboratory balances and scales not to exceed 10 Kg
- Laboratory hot plates with less than 1.0 sq. ft. heating surface
- Laboratory pH meter (with or without temperature probe)
- Light microscopes
- Luminometers
- Medical bone densitometers
- Medical differential counters
- Medical refrigerators and freezers with less than 5.0 cu. ft. internal volume
- Medical specimen centrifuges
- Microplate readers/washers
- Osmometers
- Patient blood gas analyzers
- Pipettes
- Spectrophotometers, photometers, and colorimeters designed for clinical use
- Urinalysis analyzers

Nephrology

- Hemodialysis machines; and dialysis filters designed for such machines (Note: Other dialysis equipment, filters, and parts not used for hemodialysis require a specific license and may be controlled under 15 CFR, part. 774, supp. 1, ECCN 2B352.d)
- Hemodialysis connection or tubing kits

Neurology

- Electroencephalography machines
- Neurostimulators, implantable

Obstetrics and Maternity Care

- Assisted reproductive technology and related equipment
- Incubators/Isolettes
- Infant radiant warmer and parts and accessories
- Neonatal equipment (phototherapy, nasal CPAP, etc. and all components)
- Umbilical cord clamps
- Ventilator: Infant/pediatric and tubing and accessories

Ophthalmology and Optometry

- Contact Lens cleaning solutions
- Contact Lenses, corrective
- Eyecharts
- Glasses, corrective
- Phoropters
- Tonometers
- Vision/Optometry related machines and supplies

Otology and Neurotology

- Hearing aids, accessories, and components

Physical and Occupational Therapy

- Aquatic floats and training devices
- Balance pads, platforms, and beams
- Bath cubes, therapy
- Boots, mitts, and liners for therapeutic pain relief
- Cognitive measuring devices and equipment
- Dining aids
- Electrotherapy, muscle stimulators, and tens units
- Ergometers
- Exercise bars
- Exercise table
- Fine motor assessment equipment designed for human use
- Goniometers
- Hand bars
- Hydraulic dynamometer
- Manipulation boards
- Massaging equipment
- Mat Platforms
- Medical Whirlpools
- Mobility platforms, parallel bars, ladders, stairs
- Orthopedic shoes, boots, etc.
- Parallel bars
- Pedometers
- Protective headgear
- Rehabilitation exercise, weights, band, balls, boards, and mobility equipment
- Rulometers
- Scoliometer
- Tactile sensation, sensitization, and desensitization equipment
- Therapeutic putty
- Ultrasound stimulators

Radiology

- Computer tomography scanners (CT, MDCT)
- Contrasting agents, both injectable or non-injectable
- Magnetic resonance imaging (MRI) machines
- Medical ultrasound machines
- Medical/Dental film
- Nuclear medicine imaging machines
- Positron Emission Tomography (PET)
- PET cyclotron machines
- PET radiopharmaceutical tracer machines, including cassettes
- Scintillation Camera/Anger cameras for medical imaging
- Single Photon Emission Computed Tomography (SPECT) machines
- X-ray machines, including mammography machines
- Parts and accessories for medical imaging devices above that do not contain nuclear or chemical components

Sterilization

- Aseptic, germicidal, or disinfectant wipes or clothes for medical equipment, devices or furniture

- Ready-to-use disinfectant in 32 oz. containers or less
- Aseptic, germicidal, or medical-grade soap, detergent, pre-soak, or rinse in 1 gallon containers or less
- Hand sanitizer, lotion, soap, scrub, wash, gel, or foam; including dispensing devices
- Medical cleaning brushes for equipment, patients, and furniture
- Sterilization or disinfection indicator strips, tape, or test packs
- Medical instrument sterilization pouches, mats, protector guards, or tubing
- Sterilization containers or cases less than 0.3 cu. ft.
- Autoclaves with chamber size less than 0.3 cu. ft.; including trays, containers, cassettes, cases, and filters for such systems.

Surgery

- Blood transfusion equipment
- Cervical fusion kits
- Chest drains
- Cosmetic or reconstructive implants (jaw implants, breast implants, skin grafts)
- Electrosurgery devices and supporting equipment
- Lubricant specially-formulated for surgical equipment in 1 gallon containers or less
- Orthopedic plates/screws, fixators, implants, cement
- Stents—all types and sizes
- Stockinettes
- Surgical case carts
- Surgical clean-up kits
- Surgical clips
- Surgical imaging machines; including image-guiding surgery products, ear, nose and throat
- Surgical instrument cases, trays, mats or tray liners, racks, covers, wraps, stands, holders, stringers, or protectors
- Surgical instruments—all types and sizes
- Surgical linens, drapes, or covers
- Surgical mesh
- Surgical shunts
- Surgical smoke evacuators and specialized supporting equipment
- Tissue stabilizers, surgical revascularizations
- Wound drainage equipment

EAR99-classified components, accessories, and optional equipment that are designed for and are for use with an EAR99-classified medical device included elsewhere on the list.

With this notice, OFAC is publishing the updated list of items defined as medical supplies in the **Federal Register**.

Issued: November 2, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–30207 Filed 11–30–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Identifying Information Associated With Persons Whose Property and Interests in Property Are Blocked Pursuant to Executive Order 13712 of November 23, 2015, “Blocking Property of Certain Persons Contributing to the Situation in Burundi”

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing additional identifying information associated with the four individuals listed in the Annex to Executive Order 13712 of November 23, 2015, “Blocking Property of Certain Persons Contributing to the Situation in Burundi,” whose property and interests in property have been blocked.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury’s Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

OFAC’s List of Specially Designated Nationals and Blocked Persons (“SDN List”) and additional information concerning OFAC sanctions programs are available from OFAC’s Web site (www.treasury.gov/ofac). Certain general information pertaining to OFAC’s sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On November 23, 2015, the President issued Executive Order 13712, “Blocking Property of Certain Persons Contributing to the Situation in Burundi” (the “Order”) pursuant to, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701–06). The Order was effective at 12:01 a.m. eastern standard time on November 23, 2015.

The Annex to the Order lists four individuals whose property and interests in property are blocked pursuant to the Order. OFAC is publishing additional identifying information associated with those individuals.

The listings for these individuals on OFAC’s SDN List appear as follows:

1. NDAYIRUKIYE, Cyrille; DOB 08 Jul 1954; POB Kiganda, Burundi; nationality Burundi; Gender Male; Passport DP0001029 (Burundi) issued 24 Oct 2011 expires 24 Oct 2016; Former Defense Minister (individual) [BURUNDI].

2. BUNYONI, Alain Guillaume (a.k.a. BUNYONI, Allain Guillaume), 143 Avenue Gasekebuye, Commune Urbaine de Musaga, Bujumbura, Bujumbura 1870, Burundi; DOB 02 Jan 1972; POB Bujumbura, Burundi; nationality Burundi; National ID No. 0201184751 (Burundi); Diplomatic Passport DP0001842 (Burundi) issued 08 Apr 2013 expires 08 Apr 2018; Minister of Public Security (individual) [BURUNDI].

3. BIZIMANA, Godefroid, Kinanira IV, Bujumbura, Burundi; DOB 23 Apr 1968; Diplomatic Passport DP0001520 (Burundi) issued 01 Aug 2012 expires 01 Aug 2017 (individual) [BURUNDI].

4. NIYOMBARE, Godefroid, Kinanira 4, Bujumbura, Bujumbura, Burundi; DOB 18 Oct 1969; POB Bujumbura, Burundi; nationality Burundi; Gender Male; Passport PD007079 (Burundi) issued 01 Jun 2010 expires 01 Jun 2015; National ID No. 0201CNI189976; Major General (individual) [BURUNDI].

Dated: November 25, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–30474 Filed 11–30–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13582

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department’s Office of Foreign Assets Control (OFAC) is publishing the names of 10 persons whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13582.

DATES: OFAC’s actions described in this notice were effective on November 25, 2015, as further specified below.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Associate Director for Sanctions Policy & Implementation, tel.: 202/622–2480, Office of Foreign

Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC’s Web site (www.treas.gov/ofac). Certain general information pertaining to OFAC’s sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On November 25, 2015, OFAC blocked the property and interests in property of the following 10 persons pursuant to E.O. 13582, “Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria”:

Individuals

1. ILYUMZHINOV, Kirsan Nikolayevich (a.k.a. ILYUMZHINOV, Kirsan); DOB 05 Apr 1962; POB Elista, Republic of Kalmykia, Russia (individual) [SYRIA] (Linked To: MAYALEH, Adib; Linked To: RIDA, Batoul).
2. KHURI, Mudalal (a.k.a. KHOURY, Mudallal; a.k.a. KHURI, Mudalal Mtanyus); DOB 18 Jun 1957; POB Khoms, Syria; nationality Russia (individual) [SYRIA] (Linked To: MAYALEH, Adib; Linked To: RIDA, Batoul).
3. NICOLAOU, Nicos; DOB 06 Apr 1965; POB Cyprus; nationality Cyprus (individual) [SYRIA] (Linked To: IOANNOU, Ioannis; Linked To: PIRUSETI ENTERPRISES LTD; Linked To: KHURI, Mudalal).
4. HASWANI, George (a.k.a. AL HASAWANI, George; a.k.a. HASAWANI, George; a.k.a. HASWANI, Jurj; a.k.a. HESSWANI, Georges; a.k.a. HESWANI, George; a.k.a. HEWANI, George; a.k.a. KHESOUANI, George; a.k.a. KHESOUANI, Georges); DOB 26 Sep 1946; POB Yabrud, Syria; nationality Syria; alt. nationality Russia (individual) [SYRIA].

Entities

1. EZEGOO INVESTMENTS LTD, 1 Logothetou, Lemesos 4043, Cyprus; National ID No. C310521 (Cyprus) [SYRIA] (Linked To: IOANNOU, Ioannis; Linked To: KHURI, Mudalal; Linked To: NICOLAOU, Nicos; Linked To: PRIMAX BUSINESS CONSULTANTS LIMITED).
2. HUDSOTRADE LIMITED, 118 Anexartisiyas Street, Suite 202, Limassol 3040, Cyprus; 14 Gubkina Street, Moscow, Moscow Region 117312, Russia; Web site

- <http://www.primax.com.cy>; Registration ID C81329 (Cyprus) [SYRIA] (Linked To: KHURI, Mudalal; Linked To: NICOLAOU, Nicos; Linked To: PRIMAX BUSINESS CONSULTANTS LIMITED).
3. KREMSONT COMMERCIAL INC. (a.k.a. KREMSONT ALLIANCE CORP.), Corner of Eyre Street and Hutson Street, Blake Building, No. 302, Belize City, Belize [SYRIA] (Linked To: KHURI, Mudalal).
 4. PRIMAX BUSINESS CONSULTANTS LIMITED, 118 Anexartias Street, 2nd Floor, Apt/Office 202, Limassol, Cyprus; Registration ID HE 143062 (Cyprus) [SYRIA] (Linked To: KHURI, Mudalal; Linked To: NICOLAOU, Nicos).
 5. RUSSIAN FINANCIAL ALLIANCE BANK (a.k.a. OPEN JOINT STOCK COMPANY JOINT STOCK COMMERCIAL BANK 'RUSSIAN FINANCIAL ALLIANCE'; a.k.a. RFA BANK; a.k.a. "AKB RFA, OAO"; a.k.a. "OJSC JSCB RFA"), per. Maly Karetny, d. 11–13, str. 1, Moscow 127051, Russia; SWIFT/BIC MNGRRUMM; Web site www.rfabank.ru; all offices worldwide [SYRIA] (Linked To: KHURI, Mudalal; Linked To: ILYUMZHINOV, Kirsan Nikolayevich).
 6. HESCO ENGINEERING & CONSTRUCTION CO (a.k.a. HESCO ENG & CON. CO; a.k.a. HESCO ENGINEERING AND CONSTRUCTION COMPANY LIMITED), Al Horani Building, Abdullah Ben Omer Street, Damascus, Syria; Suite 351, 10 Great Russell Street, London WC1B 3BQ, United Kingdom; Company Number 05527424 (United Kingdom) [SYRIA] (Linked To: HASWANI, George).

Dated: November 25, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–30475 Filed 11–30–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning PS–79–93 (TD 8633).

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. When sending comments please reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the collection tools should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at LaNitaVanDyke@irs.gov.

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Grantor Trust Reporting Requirements.

OMB Number: 1545–1442.

Form Number: PS–79–93 (TD 8633).

Abstract: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust as owned by a grantor or another person are properly reported.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,840,000.

Estimated Time per Respondent: 30 min.

Estimated Total Annual Burden Hours: 920,000.

The following paragraph applies to the collection of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 20, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–30375 Filed 11–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2009–85, Guidance for Expatriates and Recipients of Foreign Source Gifts and Bequests Under Sections 877A, 2801, and 6039G;

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or

copies of the collection should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at LaNitaVanDyke@irs.gov.

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and recordkeeping requirements:

Title: Guidance for Expatriates and Recipients of Foreign Source Gifts and Bequests Under Sections 877A, 2801, and 6039G.

OMB Number: 1545–2123.

Form Number: Notice 2009–85.

Abstract: Section 301 of the Heroes Earnings Assistance and Relief Tax Act of 2008 (the “Act”) enacted new sections 877A and 2801 of the Internal Revenue Code (“Code”), amended sections 6039G and 7701(a), made conforming amendments to sections 877(e) and 7701(b), and repealed section 7701(n). This notice provides guidance regarding certain federal tax consequences under these sections for individuals who renounce U.S. citizenship or cease to be taxed as lawful permanent residents of the United States.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 4 hrs., 17 min.

Estimated Total Annual Burden Hours: 420.

The following paragraph applies to all of the collection of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 20, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–30366 Filed 11–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Arbitrage Restrictions on Tax-Exempt Bonds.

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Kerry Dennis at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545–1347.

Regulation: TD 8718 and REG–138526–14 (NPRM).

Abstract: Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds.

Under section 148(f), interest on a state or local bond is not tax exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. Form 8038–T is used to pay the arbitrage rebate to the United States and to pay penalty in lieu of rebates. Burden for the form is being reported under 1545–1219.

Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. Under TD 8718, the scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

The collection of information in the proposed regulation (REG–138526–14) is in § 1.148–1(f)(2)(ii) which contains a requirement that the issuer obtain certifications and supporting documentation regarding the underwriter's sales of the issuer's bonds.

Current Actions: There is no change to the final regulations (TD 8718), however the agency is adding the proposed Regulation 138526–14 to the information collection request.

Type of Review: Revision of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 15,646

Estimated Number of Responses: 24,010.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 96,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of 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.

Approved: November 20, 2015.

Michael Joplin,

IRS Tax Analyst.

[FR Doc. 2015–30383 Filed 11–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2012–48

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to Notice 2012–48, Tribal Economic Development Bonds.

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Sara Covington, at Internal Revenue

Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Sara.L.Covington@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Tribal Economic Development Bonds.

OMB Number: 1545–2233.

Notice Number: Notice 2012–48.

Abstract: This Notice solicits applications for the reallocation of available amounts of national bond issuance authority limitation for tribal economic development bonds (“Tribal Economic Development Bonds”) that were previously allocated to eligible issuers by the Internal Revenue Service (“IRS”) and that have not been used. This Notice also provides related guidance on: (1) The application requirements and forms for requests for volume cap allocations, and (2) the method that the IRS and the Department of the Treasury will use to allocate the volume cap.

Current Actions: There are no changes being made to the burden previously requested at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Tribal governments.

Estimated Number of Respondents: 143.

Estimated Average Time per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 23, 2015.

Michael A. Joplin,

IRS Supervisory Tax Analyst.

[FR Doc. 2015–30382 Filed 11–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8918

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8918, Material Advisor Disclosure Statement.

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Sara.L.Covington@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Material Advisor Disclosure Statement.

OMB Number: 1545–0865.

Form Numbers: 8918.

Abstract: The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418, (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6111 to require each material advisor with respect to any reportable transaction to make a

return (in such form as the Secretary may prescribe) setting forth: (1) Information identifying and describing the transaction; (2) information describing any potential tax benefits expected to result from the transaction; and (3) such other information as the Secretary may prescribe.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 350.

Estimated Time per Respondent: 14 hrs., 56 minutes.

Estimated Total Annual Burden Hours: 5,096.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 20, 2015.

Michael A. Joplin,

IRS Supervisory Tax Analyst.

[FR Doc. 2015-30376 Filed 11-30-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulations, FI-255-82 (TD 7852), Registration Requirements With Respect to Debt Obligations (§ 5f.103-1(c)).

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Lanita.VanDyke@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Debt Obligations.

OMB Number: 1545-0945.

Regulation Project Number: FI-255-82.

Abstract: These regulations require an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the Internal Revenue Service in connection with enforcement of the Internal Revenue laws.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and, state, local or tribal governments.

Estimated Number of Recordkeepers: 50,000.

Estimated Time per Recordkeeper: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 20, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015-30368 Filed 11-30-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8613

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8613, Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Sara.L.Covington@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

OMB Number: 1545–1016.

Form Number: 8613.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under Internal Revenue Code section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 11 hours, 53 minutes.

Estimated Total Annual Burden Hours: 17,820.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 20, 2015.

Michael A. Joplin,

IRS Supervisory Tax Analyst.

[FR Doc. 2015–30378 Filed 11–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–34, Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Sara Covington, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Sara.L.Covington@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

OMB Number: 1545–1538.

Notice Number: Notice 97–34.

Abstract: Notice 97–34 provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 23, 2015.

Michael A. Joplin,

IRS Supervisory Tax Analyst.

[FR Doc. 2015-30377 Filed 11-30-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006-16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006-16, Renewal Community Depreciation Provisions.

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Sara Covington, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Sara.L.Covington@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Renewal Community Depreciation Provisions.

OMB Number: 1545-2001.

Revenue Procedure Number: Revenue Procedure 2006-16.

Abstract: This revenue procedure provides the time and manner for states to make retroactive allocations of commercial revitalization expenditure amounts to certain buildings placed in service in the expanded area of a renewal community pursuant to § 1400E(g) of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments and businesses or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Average Time per Respondent: 2 hours, 30 min.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 23, 2015.

Michael A. Joplin,

IRS Supervisory Tax Analyst.

[FR Doc. 2015-30380 Filed 11-30-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8876, Excise Tax on Structured Settlement Factoring Transactions.

DATES: Written comments should be received on or before February 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at LaNita.VanDyke@irs.gov.

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Excise Tax on Structured Settlement Factoring Transactions.

OMB Number: 1545-1826.

Form Number: 8876.

Abstract: Form 8876 is used to report structured settlement transactions and pay the applicable excise tax.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 5 hrs., 36 min.

Estimated Total Annual Burden Hours: 560.

The following paragraph applies to the collection of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's 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 of information 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.

Approved: November 20, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015-30364 Filed 11-30-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs; Survey of U.S. Ownership of Foreign Securities as of December 31, 2015

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice and in accordance with 31 CFR part 129, the Department of the Treasury is informing the public that it is conducting a mandatory survey of ownership of foreign securities by U.S. residents as of December 31, 2015. This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. The reporting form SHCA (2015) and instructions may be printed from the Internet at: <http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx#shc>.

Definition: Pursuant to 22 U.S.C. 3102 a United States person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The reporting panel is based upon the data submitted for the 2011 Benchmark survey and the December 2014 TIC report Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents (TIC SLT). Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What To Report: This report will collect information on holdings by U.S. residents of foreign securities, including equities, long-term debt securities, and short-term debt securities (including selected money market instruments).

How To Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the Web site address given above in the Summary. Completed reports can be submitted electronically or mailed to the Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045-0001. Inquiries can be made to the survey staff of the Federal Reserve Bank of New York at (212) 720-6300 or email: SHC.help@ny.frb.org. Inquiries can also be made to Dwight Wolkow at (202) 622-1276, email: comments2TIC@do.treas.gov.

When To Report: Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by March 1, 2016.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505-0146. An agency may not conduct or sponsor, and a person is not required to respond to, a

collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 48 hours per respondent for end-investors and custodians that file Schedule 3 reports covering their securities entrusted to U.S. resident custodians, 145 hours per respondent for large end-investors filing Schedule 2 reports, and 545 hours per respondent for large custodians of securities filing Schedule 2 reports. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2015-30361 Filed 11-30-15; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Performance Review Board Members

AGENCY: Corporate Senior Executive Management Office, Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice announces the appointment of persons to serve on the Performance Review Board of the Department of Veterans Affairs.

ADDRESSES: Corporate Senior Executive Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Contact Tia N. Butler, Executive Director, Corporate Senior Executive Management Office (052), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-7865.

SUPPLEMENTARY INFORMATION: The membership of the Department of Veterans Affairs Performance Review Board is as follows: Robert L. Nabors II (Chair), A. Jacy Thurmond, Jr., David McLenachen, Richard Hipolit, Vivieca Simpson Wright, Bonnie Miranda, John Medve, Georgia Coffey, James Manker (Alternate), Tammy Czarnecki (Alternate), Edward Bradley (Alternate).

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff,

Department of Veterans Affairs, approved this document on November 20, 2015, for publication.

Dated: November 24, 2015.

Jeffrey M. Martin,

Program Manager, Regulation Policy and Management, Office of the General Counsel.

[FR Doc. 2015-30338 Filed 11-30-15; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Parts 60 and 63

Petroleum Refinery Sector Risk and Technology Review and New Source
Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 60 and 63**

[EPA-HQ-OAR-2010-0682; FRL-9935-40-OAR]

RIN 2060-AQ75

Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action finalizes the residual risk and technology review conducted for the Petroleum Refinery source categories regulated under national emission standards for hazardous air pollutants (NESHAP) Refinery MACT 1 and Refinery MACT 2. It also includes revisions to the Refinery MACT 1 and MACT 2 rules in accordance with provisions regarding establishment of MACT standards. This action also finalizes technical corrections and clarifications for the new source performance standards (NSPS) for petroleum refineries to improve consistency and clarity and address issues related to a 2008 industry petition for reconsideration. Implementation of this final rule will result in projected reductions of 5,200 tons per year (tpy) of hazardous air pollutants (HAP) which will reduce cancer risk and chronic health effects.

DATES: This final action is effective on February 1, 2016. The incorporation by reference of certain publications for part 63 listed in the rule is approved by the Director of the Federal Register as of February 1, 2016. The incorporation by reference of certain publications for part 60 listed in the rule were approved by the Director of the Federal Register as of June 24, 2008.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-0682. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov>, or in hard copy at the EPA Docket Center, WJC

West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Brenda Shine, Sector Policies and Programs Division, Refining and Chemicals Group (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-3608; fax number: (919) 541-0246; and email address: shine.brenda@epa.gov. For specific information regarding the risk modeling methodology, contact Mr. Ted Palma, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5470; fax number: (919) 541-0840; and email address: palma.ted@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Ms. Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-7027; fax number: (202) 564-0050; and email address: malave.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. 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:

10/25 tpy emissions equal to or greater than 10 tons per year of a single pollutant or 25 tons per year of cumulative pollutants
 AEGL acute exposure guideline levels
 APCD air pollution control devices
 API American Petroleum Institute
 BAAQMD Bay Area Air Quality Management District
 BDT best demonstrated technology
 BLD bag leak detectors
 BSER best system of emission reductions
 Btu/ft² British thermal units per square foot
 Btu/scf British thermal units per standard cubic foot
 CAA Clean Air Act
 CBI confidential business information
 CCU catalytic cracking units
 CDX Central Data Exchange

CEDRI Compliance and Emissions Data Reporting Interface
 CEMS continuous emission monitoring system
 CFR Code of Federal Regulations
 CO carbon monoxide
 CO₂ carbon dioxide
 CO₂e carbon dioxide equivalents
 COMS continuous opacity monitoring system
 COS carbonyl sulfide
 CPMS continuous parameter monitoring system
 CRA Congressional Review Act
 CRU catalytic reforming units
 CS₂ carbon disulfide
 DCU delayed coking units
 EPA Environmental Protection Agency
 ERPG emergency response and planning guidelines
 ERT Electronic Reporting Tool
 ESP electrostatic precipitator
 FCCU fluid catalytic cracking unit
 FGCD fuel gas combustion device
 FMP flare management plan
 FR Federal Register
 FTIR Fourier transform infrared spectroscopy
 GC gas chromatograph
 GHG greenhouse gases
 H₂S hydrogen sulfide
 HAP hazardous air pollutants
 HCl hydrogen chloride
 HCN hydrogen cyanide
 HF hydrogen fluoride
 HFC highest fenceline concentration
 HI hazard index
 HQ hazard quotient
 ICR information collection request
 IRIS Integrated Risk Information System
 km kilometers
 LAER lowest achievable emission rate
 lb/day pounds per day
 LDAR leak detection and repair
 LEL lower explosive limit
 LTD long tons per day
 MACT maximum achievable control technology
 MIR maximum individual risk
 mph miles per hour
 MPV miscellaneous process vent
 NAICS North American Industry Classification System
 NESHAP National Emissions Standards for Hazardous Air Pollutants
 NFS near-field interfering source
 NHVCZ combustion zone net heating value
 Ni nickel
 NO_x nitrogen oxides
 NRDC Natural Resources Defense Council
 NSPS new source performance standards
 NTTAA National Technology Transfer and Advancement Act
 OAQPS Office of Air Quality Planning and standards
 OECA Office of Enforcement and Compliance Assurance
 OEHA Office of Environmental Health Hazard Assessment
 OEL open-ended line
 OMB Office of Management and Budget
 PM particulate matter
 PM_{2.5} particulate matter 2.5 micrometers in diameter and smaller
 ppbv parts per billion by volume
 ppm parts per million

ppmv parts per million by volume
 PRA Paperwork Reduction Act
 PRD pressure relief device ¹
 psia pounds per square inch absolute
 psig pounds per square inch gauge
 REL reference exposure level
 REM Model Refinery Emissions Model
 RFA Regulatory Flexibility Act
 RTC response to comment
 RTR Risk and Technology Review
 SAB Science Advisory Board
 SBA Small Business Administration
 SCAQMD South Coast Air Quality Management District
 SCR selective catalytic reduction
 SISNOSE significant economic impact on a substantial number of small entities
 SO₂ sulfur dioxide
 SRP sulfur recovery plant
 SRU sulfur recovery unit
 SSM startup, shutdown and malfunction
 TOSHI target organ-specific hazard index
 tpy tons per year
 UMRA Unfunded Mandates Reform Act
 URE unit risk estimate
 UV-DOAS ultraviolet differential optical absorption spectroscopy
 VCS voluntary consensus standards
 VOC volatile organic compounds
 °F degrees Fahrenheit
 ΔC the concentration difference between the highest measured concentration and the lowest measured concentration
 μg/m³ micrograms per cubic meter

Background Information. On June 30, 2014, the EPA proposed revisions to both of the petroleum refinery NESHAP based on our residual risk and technology review (RTR). In that action, we also proposed to revise the NESHAP pursuant to CAA section 112(d)(2) and (3), to revise the SSM provisions in the NESHAP, and to make technical corrections to the NSPS to address issues related to reconsideration of the final NSPS subpart Ja rule in 2008. In this action, we are finalizing decisions and revisions for these rules. We summarize some of the more significant comments received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is provided in the "Response to Comment" document, which is available in Docket ID No. EPA-HQ-OAR-2010-0682. The "track changes" version of the regulatory language that incorporates the changes in this final action is also available in the docket for this rulemaking.

Organization of this Document. This preamble is organized as follows:

I. General Information

- A. Does this action apply to me?
- B. Where can I get a copy of this document and other related information?

- C. Judicial Review and Administrative Reconsideration
- II. Background
 - A. What is the statutory authority for this action?
 - B. How do the NESHAP and NSPS regulate air pollutant emissions from refineries?
 - C. What changes did we propose for the Petroleum Refinery NESHAP and NSPS in our June 30, 2014 RTR proposal?
- III. What is included in this final rule?
 - A. What are the final NESHAP amendments based on the risk review for the Petroleum Refinery source categories?
 - B. What are the final NESHAP amendments based on the technology review for the Petroleum Refinery source categories?
 - C. What are the final NESHAP amendments pursuant to section 112(d)(2) & (3) for the Petroleum Refinery source categories?
 - D. What are the final NESHAP amendments addressing emissions during periods of SSM?
 - E. What other revisions to the NESHAP and NSPS are being promulgated?
 - F. What are the requirements for submission of performance test data to the EPA?
 - G. What are the effective and compliance dates of the NESHAP and NSPS?
 - H. What materials are being incorporated by reference?
- IV. What is the rationale for our final decisions and amendments to the Petroleum Refinery NESHAP and NSPS?
 - A. Residual Risk Review for the Petroleum Refinery Source Categories
 - B. Technology Review for the Petroleum Refinery Source Categories
 - C. Refinery MACT Amendments Pursuant to CAA section 112(d)(2) and (d)(3)
 - D. NESHAP Amendments Addressing Emissions During Periods of SSM
 - E. Technical Amendments to Refinery MACT 1 and 2
 - F. Technical Amendments to Refinery NSPS Subparts J and Ja
- V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
 - A. What are the affected facilities, the air quality impacts and cost impacts?
 - B. What are the economic impacts?
 - C. What are the benefits?
 - D. Impacts of This Rulemaking on Environmental Justice Populations
 - E. Impacts of This Rulemaking on Children's Health
- VI. Statutory and Executive Order Reviews
 - A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - 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 (NTTAA) and 1 CFR part 51
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS ^a Code
Petroleum Refining Industry	324110

^aNorth American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP or NSPS. If you have any questions regarding the applicability of any aspect of these NESHAP or NSPS, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. 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 final action will also be available on the Internet through the 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 final action at: <http://www.epa.gov/ttn/atw/petref.html>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same Web site.

Additional information is available on the RTR Web site at <http://www.epa.gov/ttn/atw/rrisk/rtrpg.html>. This information includes an overview of the RTR program, links to project Web sites

¹ This term is common vernacular to describe the variety of devices regulated as pressure relief valves subject to the requirements in 40 CFR part 63 subpart CC.

for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 1, 2016. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for the EPA to reconsider the rule “[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

1. NESHAP

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. “Major sources” are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of

HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems or techniques, including but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12-percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor, under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake 2 different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them “as necessary (taking into account developments in practices, processes, and control technologies)” no less frequently than every eight years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the

technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect. The residual risk review is required within eight years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).² For more information on the statutory authority for this rule, see 79 FR 36879.

2. NSPS

Section 111 of the CAA establishes mechanisms for controlling emissions of air pollutants from stationary sources. Section 111(b) of the CAA provides authority for the EPA to promulgate NSPS that apply only to newly constructed, reconstructed and modified sources. Once the EPA has elected to set NSPS for new and modified sources in a given source category, CAA section 111(d) calls for regulation of existing sources, with certain exceptions explained below.

Specifically, section 111(b) of the CAA requires the EPA to establish emission standards for any category of new and modified stationary sources that the Administrator, in his or her judgment, finds “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” The EPA has previously made endangerment findings under this section of the CAA for more than 60 stationary source categories and subcategories that are now subject to NSPS.

Section 111 of the CAA gives the EPA significant discretion to identify the affected facilities within a source category that should be regulated. To define the affected facilities, the EPA can use size thresholds for regulation and create subcategories based on source type, class or size. Emission limits also may be established either for equipment within a facility or for an entire facility. For listed source categories, the EPA must establish “standards of performance” that apply

² The U.S. Court of Appeals has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) (“If EPA determines that the existing technology-based standards provide an ‘ample margin of safety,’ then the Agency is free to readopt those standards during the residual risk rulemaking.”).

to sources that are constructed, modified or reconstructed after the EPA proposes the NSPS for the relevant source category.³

The EPA also has significant discretion to determine the appropriate level for the standards. Section 111(a)(1) of the CAA provides that NSPS are to reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT) or the best system of emission reduction (BSER). The standard that the EPA develops, based on the BSER achievable at that source, is commonly a numerical emission limit, expressed as a performance level (*i.e.*, a rate-based standard). Generally, the EPA does not prescribe a particular technological system that must be used to comply with a NSPS. Rather, sources remain free to elect whatever combination of measures will achieve equivalent or greater control of emissions.

Costs are also considered in evaluating the appropriate standard of performance for each category or subcategory. The EPA generally compares control options and estimated costs and emission impacts of multiple, specific emission standard options under consideration. As part of this analysis, the EPA considers numerous factors relating to the potential cost of the regulation, including industry organization and market structure, control options available to reduce emissions of the regulated pollutant(s) and costs of these controls.

B. How do the NESHAP and NSPS regulate air pollutant emissions from refineries?

The EPA promulgated the petroleum refinery NESHAP pursuant to CAA section 112(d)(2) and (3) for refineries located at major sources in two separate rules. On August 18, 1995, the first

petroleum refinery MACT standard was promulgated in 40 CFR part 63, subpart CC (60 FR 43620). This rule is known as “Refinery MACT 1” and covers the “Sources Not Distinctly Listed,” meaning it includes all emissions sources from petroleum refinery process units, except those listed separately under the section 112(c) source category list and expected to be regulated by other MACT standards (for example, boilers and process heaters). Some of the emission sources regulated in Refinery MACT 1 include miscellaneous process vents (MPV), storage vessels, wastewater, equipment leaks, gasoline loading racks, marine tank vessel loading and heat exchange systems.

On April 11, 2002 (67 FR 17762), EPA promulgated a second MACT standard regulating certain process vents that were listed as a separate source category under CAA section 112(c) and that were not addressed as part of the Refinery MACT 1. This standard, which is referred to as “Refinery MACT 2”, covers process vents on catalytic cracking units (CCU) (including FCCU), CRU and SRU and is codified as 40 CFR part 63, subpart UUU.

Finally, on October 28, 2009, we revised Refinery MACT 1 by adding MACT standards for heat exchange systems, which the EPA had not addressed in the original 1995 Refinery MACT 1 rule (74 FR 55686). In this same 2009 action, we updated the cross-references to the General Provisions in 40 CFR part 63. On June 20, 2013 (78 FR 37133), we promulgated minor revisions to the heat exchange provisions of Refinery MACT 1.

On September 27, 2012, Air Alliance Houston, California Communities Against Toxics and other environmental and public health groups filed a lawsuit alleging that the EPA missed statutory deadlines to review and revise Refinery MACT 1 and 2. The EPA reached an agreement to settle that litigation and entered into a Consent Decree. The Consent Decree provides for the Administrator to sign a final action no later than September 30, 2015.

Refinery NSPS subparts J and Ja regulated criteria pollutant emissions, including particulate matter (PM), sulfur dioxide (SO₂), nitrogen oxides (NO_x) and carbon monoxide (CO) from FCCU catalyst regenerators, fuel gas combustion devices (FGCD) and sulfur recovery plants. Refinery NSPS subpart Ja also regulates criteria pollutant emissions from fluid coking units and DCU.

The NSPS for petroleum refineries (40 CFR part 60, subpart J) were promulgated in 1974, amended in 1976 and amended again in 2008, following

a review of the standards. As part of the review that led to the 2008 amendments to the Refinery NSPS subpart J, the EPA developed separate standards of performance for new process units (40 CFR part 60, subpart Ja). However, the EPA received multiple petitions for reconsideration on issues related to those standards. The Administrator granted the petitions for reconsideration. The EPA addressed petition issues related to process heaters and flares by promulgating amendments to the Refinery NSPS subparts J and Ja on September 12, 2012 (77 FR 56422). In this action, we are finalizing technical corrections and clarifications to NSPS subparts J and Ja raised by American Petroleum Institute (API) in their 2008 petition for reconsideration that were not addressed by the final NSPS amendments of 2012.

The petroleum refining industry consists of facilities that engage in converting crude oil into refined products, including liquefied petroleum gas, gasoline, kerosene, aviation fuel, diesel fuel, fuel oils, lubricating oils and feedstocks for the petrochemical industry. Currently, 142 facilities have emission sources regulated by either or both Refinery MACT 1 and 2.

Petroleum refinery activities start with the receipt of crude oil for storage at the refinery, include all the petroleum handling and refining operations, and terminate with loading of refined products into pipelines, tank or rail cars, tank trucks, or ships or barges that take products from the refinery to distribution centers. Petroleum-specific process units include FCCU and CRU. Other units and processes found at petroleum refineries (as well as at many other types of manufacturing facilities) include storage vessels and wastewater treatment plants. HAP emitted by this industry include organics (*e.g.*, acetaldehyde, benzene, formaldehyde, hexane, phenol, naphthalene, 2-methylnaphthalene, dioxins, furans, ethyl benzene, toluene and xylene); reduced sulfur compounds (*i.e.*, carbonyl sulfide (COS), carbon disulfide (CS₂)); inorganics (*e.g.*, hydrogen chloride (HCl), hydrogen cyanide (HCN), chlorine, hydrogen fluoride (HF)); and metals (*e.g.*, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, mercury, manganese and nickel (Ni)). This industry also emits criteria pollutants and other non-HAP, including NO_x, PM, SO₂, volatile organic compounds (VOC), CO, greenhouse gases (GHG) and total reduced sulfur.

³ Specific statutory and regulatory provisions define what constitutes a modification or reconstruction of a facility. 40 CFR 60.14 provides that an existing facility is modified and, therefore, subject to an NSPS, if it undergoes any physical change in the method of operation which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. 40 CFR 60.15, in turn, provides that a facility is reconstructed if components are replaced at an existing facility to such an extent that the capital cost of the new equipment/components exceed 50-percent of what is believed to be the cost of a completely new facility.

C. What changes did we propose for the Petroleum Refinery NESHAP and NSPS in our June 30, 2014, RTR proposal?

On June 30, 2014, the EPA published a proposed rule in the **Federal Register** addressing the RTR for the Petroleum Refinery NESHAP, 40 CFR part 63, subparts CC and UUU. The proposal also included changes pursuant to section 112(d)(2) and (3) and technical revisions to the NSPS. Specifically, we proposed:

(1) Pursuant to CAA sections 112(d)(2) and (3):

a. *Refinery MACT 1:*

- Adding MACT Standards for DCU decoding operations.

- Adding operational requirements for flares used as APCD in Refinery MACT 1 and 2.

- Adding requirements and clarifications for vent control bypasses in Refinery MACT 1.

b. *Refinery MACT 2:*

- Revising the CRU purge vent exemption.

(2) Pursuant to CAA sections 112(d)(6) and 112(f)(2):

- Revising Refinery MACT 1 to cross-reference the corresponding storage vessel requirements in the Generic MACT (40 CFR part 63, subpart WW, as applicable), and revising the definition of Group 1 storage vessels to include smaller capacity storage vessels and to include storage vessels storing materials with lower vapor pressures.

(3) Pursuant to CAA section 112(d)(6):

a. *Refinery MACT 1:*

- Allowing refineries to meet the leak detection and repair (LDAR) requirements in Refinery MACT 1 by monitoring for leaks using optical gas imaging in place of EPA Method 21, once the monitoring protocol set forth in Appendix K is promulgated.

- Amending the Marine Tank Vessel Loading Operations NESHAP, 40 CFR part 63, subpart Y, to delete the exclusion for marine vessel loading operations at petroleum refineries.

- Establishing a fenceline monitoring work practice standard to improve the management of fugitive emissions.

b. *Refinery MACT 2:*

- Incorporating requirements consistent with those in Refinery NSPS subpart Ja for FCCU including:

- Requiring the use of 3-hour averages rather than daily averages for parameter operating limits (e.g., depending on the type of control device: Opacity, total power, secondary current, pressure drop, and/or liquid-to-gas ratio).

- Removing the Refinery NSPS subpart J incremental PM emissions allowance for post combustion devices

when burning liquid or solid fuels, and removing the 30 percent opacity limit for units complying with NSPS subpart J.

- Adding requirements for FCCU controls to include bag leak detectors (BLD) as an option to continuous opacity monitoring system (COMS).

- Incorporating total power and the secondary current operating limits for electrostatic precipitators (ESP).

- Requiring daily checks of the air or water pressure to the spray nozzles on jet ejector-type wet scrubber or other type of wet scrubber equipped with atomizing spray nozzles.

- Requiring FCCU periodic performance testing on a frequency of once every 5 years, as opposed to the current rule, which only requires an initial performance test.

- Including a correlation equation for the use of oxygen-enriched air for SRU.

- Allowing SRU subject to Refinery NSPS subpart Ja with a capacity greater than 20 long tons per day (LTD) to comply with Refinery NSPS subpart Ja as a means of complying with Refinery MACT 2.

(4) Other proposed changes include:

- Removing exemptions from the rule requirements for periods of SSM in order to ensure that the NESHAP are consistent with the court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008).

- Clarifying requirements related to open-ended valves or lines.

- Adding electronic reporting requirements.

- Updating the General Provisions cross-reference tables.

- Making technical corrections and clarifications to NSPS subparts J and Ja.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Petroleum Refinery source categories and amends the Petroleum Refinery NESHAP based on those determinations. This action also finalizes other changes to the NESHAP including revising Refinery MACT 1 and 2 pursuant to CAA section 112 (d)(2) and (3), including revising requirements for flares and pressure relief devices (PRD). This action finalizes changes to the SSM provisions to ensure that the subparts are consistent with the court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), adds electronic reporting requirements in Refinery MACT 1 and 2; and updates the General Provisions cross-reference tables. Finally, this action finalizes technical corrections and clarifications to Refinery NSPS

subparts J and Ja to address issues raised in the reconsideration of these rules.

A. What are the final NESHAP amendments based on the risk review for the Petroleum Refinery source categories?

The EPA is promulgating final amendments to the Petroleum Refinery NESHAP pursuant to CAA section 112(f) that expand the existing Refinery MACT 1 control requirements and extend these requirements to smaller tanks and tanks with lower vapor pressures. Specifically, consistent with the proposal, the EPA is amending Refinery MACT 1 by revising the definition of Group 1 storage vessels to include storage vessels with capacities greater than or equal to 20,000 gallons but less than 40,000 gallons if the maximum true vapor pressure is 1.0 psia or greater and to include storage tanks greater than 40,000 gallons if the maximum true vapor pressure is 0.75 psia or greater. The EPA is also adding a cross-reference to the storage vessel requirements in the Generic MACT (40 CFR part 63, subpart WW and subpart CC), which include requirements for guide pole controls and other fittings as well as inspection requirements. After considering the public comments, the final amendments include minor changes from our proposed requirements to clarify language and correct typographical and referencing errors.

B. What are the final NESHAP amendments based on the technology review for the Petroleum Refinery source categories?

1. Refinery MACT 1

We determined that there are developments in practices, processes and control technologies that warrant revisions to the MACT standards for this source category. Therefore, to satisfy the requirements of CAA section 112(d)(6), we are revising the MACT standards to amend 40 CFR part 63, subpart Y to delete the exclusion for marine vessel loading operations at petroleum refineries. Removing this exclusion will require small marine vessel loading operations (i.e., operations with HAP emissions less than 10/25 tpy) and offshore marine vessel loading operations to use submerged filling based on the cargo filling line requirements in 46 CFR 153.282, as proposed.

We are also finalizing a fenceline monitoring work practice standard to improve the management of fugitive emissions and finalizing EPA Methods 325A and 325B to support the work

practice, with some changes from proposal to address issues raised by commenters. Key revisions include: New provisions for reduced monitoring for facilities with consistently low fence-line concentrations; requirements for alternatives to passive monitoring; revised placement guidance to allow perimeter monitoring within a facility's property boundary provided all sources are encompassed within the monitoring perimeter; reductions in the number of monitors required for subareas and segregated areas; clarifications on monitor placement for internal roadways or other right-of-ways and marine docks; and revised timelines for submitting periodic reports (quarterly rather than semiannually) and implementing the work practice standard (2 years after promulgation rather than 3 years as proposed). We are also revising Refinery MACT 1 storage vessel requirements as described above under the risk review, as proposed.

2. Refinery MACT 2

We determined that there are developments in practices, processes and control technologies that warrant revisions to the MACT standards for this source category. Therefore, to satisfy the requirements of CAA section 112(d)(6), we are revising the Refinery MACT 2 standard for FCCU subject to Refinery NSPS subpart J or those electing to comply with the Refinery NSPS subpart J requirements. As proposed, we are removing the incremental PM limit when burning liquid or solid fuels. We are finalizing a 20-percent opacity operating limit evaluated on a 3-hour average, which differs from the proposal to eliminate the 30-percent opacity limit and instead allow only for a site-specific opacity operating limit or control device parameter monitoring. As proposed, we are finalizing requirements to make Refinery MACT 2 consistent with Refinery NSPS subpart Ja for FCCU by including 3-hour averages rather than daily averages for parameter operating limits, and by including 3-hour averages rather than daily averages for the site-specific opacity operating limit. We are also finalizing requirements, as proposed, for FCCU controls to include adding BLD as an option to COMS, incorporating total power and the secondary current operating limits for ESP and requiring daily checks of the air or water pressure to the spray nozzles on jet ejector-type wet scrubbers or other types of wet scrubbers equipped with atomizing spray nozzles.

Finally, we are finalizing, as proposed, requirements for FCCU periodic performance testing at a frequency of once every 5 years rather

than the current requirements for a one-time initial performance test. However, for owners or operators complying with the Refinery NSPS subpart J option (with the 20-percent opacity operating limit discussed above), if the PM emissions are within 80-percent of the PM limit during any periodic performance test (*i.e.*, emissions exceed 0.8 lb PM/1,000 lbs of coke burn-off), the refinery owner or operator must conduct subsequent performance tests on an annual basis. Based on comments received, we are also adding requirements in the final rule for owners or operators of FCCU to conduct a one-time test for HCN emissions from the FCCU concurrent with their first periodic performance test, which must be conducted on or before August 1, 2017 for all FCCU subject to Refinery MACT 2.

For SRU, as proposed, we are finalizing a correlation equation for the use of oxygen-enriched air. Additionally, as proposed, we are finalizing requirements to allow sulfur recovery plants subject to Refinery NSPS subpart Ja with a capacity greater than 20 LTD to comply with Refinery NSPS subpart Ja as a means of complying with Refinery MACT 2.

C. What are the final NESHAP amendments pursuant to section 112(d)(2) & (3) for the Petroleum Refinery source categories?

1. Refinery MACT 1

We are finalizing MACT standards for DCU decoking operations that require that each coke drum be depressured to a closed blowdown system until the coke drum pressure is 2 psig with minor revisions from proposal. Specifically, we are finalizing provisions for existing DCU affected sources to average over a 60-cycle (*i.e.*, 60 batch) basis to comply with the 2 psig limit, rather than the proposed requirement to meet the 2 psig limit on a per venting event basis. In addition, we are finalizing requirements for new DCU affected sources to depressure to 2.0 psig on a per-event, not-to-exceed basis, adding one significant digit to the limit for new DCU affected sources. For both new and existing DCU affected sources, we are finalizing specific provisions for DCU with water overflow design and for double quenching.

We are finalizing operational requirements and the associated monitoring, recordkeeping and reporting requirements for flares used as APCD in Refinery MACT 1 and 2 with revisions to the requirements proposed. Prior to these amendments, Refinery MACT 1 and 2 cross-referenced the

General Provisions requirements at 40 CFR 63.11(b). As proposed, this final action replaces the cross reference to the General Provisions and incorporates enhanced flare operational requirements directly into the Refinery MACT regulations. As proposed, the final rule amendments require that refinery flares operate with continuously lit pilot flames at all times. Consistent with our proposal, we are finalizing requirements for flares to operate with no visible emissions and comply with consolidated requirements related to flare tip velocity, but in the final rule these direct emissions limits apply when flare vent gas flow is below the smokeless capacity of the flare rather than at all times. Above the smokeless capacity of the flare, we are establishing a work practice standard related to the visible emissions and velocity limits; these work practice standards are described in more detail in section III.D.1 of this preamble.

We are finalizing new operational requirements related to combustion zone gas properties with revisions from proposal. In response to comments on the proposal, we are finalizing requirements that flares meet a minimum operating limit of 270 BTU/scf NHV_{cz} on a 15-minute average, and are allowing refinery owners or operators to use a corrected heat content of 1,212 BTU/scf for hydrogen to demonstrate compliance with this operating limit. We had proposed two separate sets of limits, one being more stringent if an olefins/hydrogen mixture was present in the waste gas. For each set of limits, we proposed three different alternative combustion zone operating limits: One based on the combustion zone net heat content with no correction for the heat content of hydrogen, one based on the lower flammability limit and one based on the combustibles concentration. We proposed that these limits be determined on a 15-minute "feed-forward" block average approach (*i.e.*, compositional data are collected every 15 minutes, after which adjustments are made). We have included an additional option for refiners to comply where more frequent data are collected (using direct net heating value monitoring) to calculate the combustion limit using net heating value data from the same 15-minute block period. We are simplifying the compliance approach to a single operating limit based only on the combustion zone net heating value (with a hydrogen correction). As proposed, we are requiring refinery owners or operators to characterize the composition of waste gas, assist gas and

fuel to demonstrate compliance with the operational requirements.

As proposed, we are also finalizing in this rule a burden reduction option to use grab sampling every 8 hours rather than continuous vent gas composition or heat content monitors. We are also including, based on public comment, provisions to conduct limited initial sampling and process knowledge to characterize flare gas composition for flares in “dedicated” service as an alternative to collecting grab samples during each specific event. We are finalizing a requirement for daily visible emissions observations as proposed, but, based on public comment, we are allowing owners or operators to use video surveillance cameras to demonstrate compliance with the visible emissions limit as an alternative to the daily visible emissions observations.

For PRD, we are finalizing requirements for monitoring systems that are capable of identifying and recording the time and duration of each pressure release to the atmosphere, as proposed. Certain PRD with low set pressures or low emission potential or in liquid service would not be subject to these monitoring requirements. We are finalizing requirements to minimize or prevent atmospheric releases of HAP through PRD. Instead of the proposed prohibition on such releases, we are finalizing work practice requirements that require both preventive measures as well as root cause analysis and corrective action that will incentivize refinery owners or operators to eliminate the causes of the releases.

We are finalizing requirements for bypass lines with minor revisions from those proposed. Specifically, we are not adopting the proposed requirement to install quantitative flow monitors and thus are leaving in place the requirement to use flow indicators on bypass lines. In addition, we are maintaining the requirements to estimate and report the quantity of organic HAP released. In response to public comment, we are also clarifying changes to remove the proposed reference to air intrusion and specifying that reporting of bypasses is only required when “regulated material” is discharged to the atmosphere as a result of a bypass of a control device.

We are also finalizing revisions to the definition of miscellaneous process vent, as proposed. These revisions include deletion of exclusions associated with episodic releases and vents from in situ sampling systems. As proposed, the final amendments require that these vents must meet the standards applicable to MPV.

2. Refinery MACT 2

For CRU vents, we are finalizing the vessel pressure limit exclusion of 5 psig to apply only to passive depressurization, as proposed.

D. What are the final NESHAP amendments addressing emissions during periods of SSM?

We are finalizing, as proposed, changes to Refinery MACT 1 and 2 to eliminate the SSM exemption. Consistent with *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), the EPA has established standards in this rule that apply at all times. EPA is revising Table 6 of subpart CC of 40 CFR part 63 and Table 44 to subpart UUU of 40 CFR part 63 (the General Provisions Applicability Tables) to change several references related to requirements that apply during periods of SSM. We also are eliminating or revising certain recordkeeping and reporting requirements related to the eliminated SSM exemptions. We also are removing or modifying inappropriate, unnecessary or redundant language in the absence of the SSM exemption. Further, for certain emission sources in both MACT 1 and 2, we are establishing standards to address emissions during these periods. These are described below.

1. Refinery MACT 1

We are finalizing a work practice standard for PRD that requires refinery owners or operators to establish prevention measures for each PRD in organic HAP service. Under the work practice standard, where a direct release occurs, the refinery is required to perform root cause analysis and implement corrective action. The work practice standard also limits the number of events that a PRD may release to the atmosphere during a 3-year period, as explained further in the section IV.D. of this preamble.

We are also finalizing a work practice standard for emergency flaring events that requires refinery owners or operators to establish prevention measures, including the development of a flare management plan (FMP), and perform root cause analysis and implement corrective action following flaring events during which the velocity of waste gas going to the flare or visible emissions limits (*i.e.*, opacity) at the flare tip are exceeded, and to limit the number of these events allowed in a 3-year period, as explained further in section IV.D. of this preamble. Both of these work practice standards are consistent with the EPA’s goal to improve the effectiveness of the rules.

These requirements will provide a strong incentive for facilities, over time, to better operate their processes to prevent PRD and flare releases.

We are also finalizing requirements for opening process equipment to the atmosphere during maintenance events after draining and purging to a closed system, provided the hydrocarbon content is less than or equal to 10-percent of the lower explosive limit (LEL). For those situations where 10-percent LEL cannot be demonstrated, the equipment may be opened and vented to the atmosphere if the pressure is less than or equal to 5 psig, provided there is no active purging of the equipment to the atmosphere until the LEL criterion is met. This 5 psig allowance is only available during shutdown. We are also providing additional allowances for situations where it is not technically feasible to depressurize a control system where there is no more than 72 lbs VOC per day vented to the atmosphere, consistent with our Group 1 applicability cutoff for control of process vents, or for catalyst changeout activities where hydrotreater pyrophoric catalyst must be purged. Provisions to demonstrate that process equipment is opened only after the LEL, pressure or mass in the vessel requirement is met includes documenting the procedures for equipment openings and procedures for verifying that the openings meet the specific, above-discussed requirements using site-specific procedures used to de-inventory equipment for safety purposes (*i.e.*, hot work or vessel entry procedures).

2. Refinery MACT 2

The Refinery MACT 2 standards regulate all HAP emissions from the three refinery process vents subject to Refinery MACT 2. For FCCU, the standard specifies a CO limit as a surrogate for organic HAP and specifies a PM limit (or Ni limit) as a surrogate for metal HAP. Compliance with the organic HAP emissions limit is demonstrated using a continuous CO monitor; compliance with the metal HAP emissions limit is demonstrated using either COMS or control device parameter monitoring systems (CPMS). At proposal, with the removal of the exemptions in the Refinery MACT 2 rule for periods of startup and shutdown, we recognized the need for alternative standards during some startup and shutdown situations, and we proposed alternative requirements.

For this final rule, we are including a 1-percent minimum oxygen limit as an alternative to the 500 ppmv hourly CO limit during FCCU startup for partial

burn FCCU with CO boilers, as proposed. We are extending that alternative limit to all FCCU and extending it to apply during shutdown.

We are not finalizing the proposed alternative opacity limit for FCCU during startup. Instead, based on public comments received, we are finalizing an alternative minimum cyclone face velocity limit as a means to demonstrate compliance with the PM limit during both startup and shutdown, regardless of the type of FCCU and its control device. We are finalizing alternative standards for sulfur recovery plant (SRP) incinerator temperature and excess oxygen limits during SRP shutdown, as proposed, and we are extending the proposed alternative standards to startup as well.

E. What other revisions to the NESHAP and NSPS are being promulgated?

We are finalizing technical amendments to NSPS subparts J and Ja with limited changes from what we proposed. First, in response to comments, we are revising the NSPS requirements that a flow sensor have a “measurement sensitivity” of no more than 5-percent of the flow rate to an “accuracy” requirement that the flow sensor have an accuracy of 5-percent of the flow rate. This change will make the requirements more clear and consistent between the flow meter requirements in the NSPS and the MACT standards since it is the same flow meter subject to these requirements. We are also revising flare flow rate accuracy requirements in Refinery NSPS subpart Ja to make them consistent with those we are finalizing in Refinery MACT 1. Finally, we are revising 40 CFR 60.101a(b) to begin as “Except for flares and delayed coking units . . .” to correct an inadvertent error. We proposed revisions to this sentence solely to allow sources subject to Refinery NSPS subpart J to comply with the provisions in Refinery NSPS subpart Ja instead. However, the words “and delayed coking units” were inadvertently omitted from the initial part of the sentence. Thus, as intended, we are finalizing revisions to this sentence to allow sources subject to Refinery NSPS subpart J to comply with the provisions in Refinery NSPS subpart Ja.

F. What are the requirements for submission of performance test data to the EPA?

As proposed, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is finalizing the requirement for owners or operators of

Petroleum Refinery facilities to submit electronic copies of certain required performance test reports through the EPA’s Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The EPA believes that the electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability, will further assist in the protection of public health and the environment and will ultimately result in less burden on the regulated community. Electronic reporting can also eliminate paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors and providing data quickly and accurately to the affected facilities, air agencies, the EPA and the public.

As mentioned in the preamble of the proposal, the EPA Web site that stores the submitted electronic data, WebFIRE, will be easily accessible to everyone and will provide a user-friendly interface that any stakeholder could access. By making the records, data and reports addressed in this rulemaking readily available, the EPA, the regulated community and the public will benefit when the EPA conducts its CAA-required technology and risk-based reviews. As a result of having reports readily accessible, our ability to carry out comprehensive reviews will be increased and achieved within a shorter period of time.

We anticipate fewer or less substantial information collection requests (ICRs) in conjunction with prospective CAA-required technology and risk-based reviews may be needed. We expect this to result in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing requirements would be a cost savings to industry. The EPA should also be able to conduct these required reviews more quickly. While the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the agency’s ability to provide these required reviews more quickly, resulting in increased public health and environmental protection.

Air agencies could benefit from more streamlined and automated review of the electronically submitted data. 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. The ability to access and review air emission report information electronically will assist air agencies to more quickly and accurately determine compliance with the applicable regulations, potentially allowing a faster response to violations which could minimize harmful air emissions. This benefits both air agencies and the general public.

For a more thorough discussion of electronic reporting required by this rule, see the discussion in the preamble of the proposal. 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 will save industry, air agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories, air quality regulations, and enhancing the public’s access to this important information.

G. What are the effective and compliance dates of the NESHAP and NSPS?

The final amendments to the NESHAP and NSPS in this action are effective on February 1, 2016. As proposed, new sources must comply with these requirements by the effective date of the final rule or upon startup, whichever is later.

As proposed, existing sources are required to comply with the final DCU and CRU requirements no later than 3 years after the effective date of the final rule. Similarly, as proposed, owners or operators are required to comply with the new operating and monitoring requirements for existing flares no later than 3 years after the effective date of the final rule.

We proposed to provide 3 years from the effective date of the final rule for refinery owners or operators to install and begin monitoring (collecting samples) around the fence line of their existing facility. If refinery owners and operators determined that a site-specific monitoring plan was needed, they would also need to submit and receive approval for such a plan during the 3-year compliance period. Based on information submitted during the comment period, we are finalizing requirements that refinery owners or operators begin collecting samples around the fence line within 2 years of the effective date of the final rule. Based on information submitted during the comment period, 1 year is sufficient time to identify proper monitoring locations and to install the required monitoring stations around the facility

fenceline. However, owners or operators may need additional monitoring systems to account for near-field interfering sources (NFS), for which the development and approval of a site-specific fenceline monitoring plan is required. We expect that the site-specific fenceline monitoring plans can take an additional year to develop, submit and obtain approval.

Consequently, we are providing 2 years from the effective date of the final rule for refinery owners or operators to install and begin collecting samples around the fenceline of their facility.

As proposed, we are requiring that existing sources comply with the submerged filling requirement for marine vessel loading on the effective date of the final rule.

As proposed, we are providing 18 months after the effective date of the final rule to conduct required performance tests and comply with any revised operating limits for FCCU.

We proposed to require refinery owners or operators to comply with the revisions to the SSM provisions of Refinery MACT 1 and 2 on the effective date of the final rule. As proposed, this final rule requires refinery owners or operators to comply with the limits in Refinery MACT 2 or the alternative limits in this final rule during startup and shutdown for FCCU and SRU on the effective date of the final rule.

The flare work practice standards for high-load flaring events (events exceeding the smokeless capacity of the flare) require development of FMP (or revision of an existing plan) to specifically consider emergency shutdown and other high load events. In this FMP, refinery owners or operators must consider measures that can be implemented to reduce the frequency and magnitude of these high-load flaring events. This may include installation of a flare gas recovery system. Additionally, the work practice standards will require refinery owners or operators to identify and implement measures that may involve process changes. Therefore, we are establishing a compliance date of 3 years from the effective date of the final rule for refinery owners or operators to comply with the work practice standards for high load flaring events. We also note that this compliance period is consistent with the compliance time provided for the flare operating limits.

For atmospheric PRD in HAP service we are establishing a work practice standard that requires a process hazard analysis and implementation of a minimum of three redundant measures to prevent atmospheric releases. Alternately, refinery owners or

operators may elect to install closed vent systems to route these PRD to a flare, drain (for liquid thermal relief valves) or other control system. We anticipate that sources will need to identify the most appropriate preventive measures or control approach; design, install and test the system; install necessary process instrumentation and safety systems; and may need to time installations with equipment shutdown or maintenance outages. Therefore, we have established a compliance date of 3 years from the effective date of the final rule for refinery owners or operators to comply with the work practice standards for atmospheric PRD.

As proposed, we are requiring compliance with the electronic reporting provisions for performance tests conducted for Refinery MACT 1 and 2 on the effective date of the final rule.

Finally, we are finalizing additional requirements for storage vessels under CAA sections 112(d)(6) and (f)(2) with a compliance date 90 days after the effective date of the final rule, as proposed.

H. What materials are being incorporated by reference?

In this final rule, the EPA is including regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following documents described in the amendments to 40 CFR 63.14:

- ASTM D1945–03 (Reapproved 2010), Standard Test Method for Analysis of Natural Gas by Gas Chromatography, (Approved January 1, 2010).
- ASTM D1945–14, Standard Test Method for Analysis of Natural Gas by Gas Chromatography.
- ASTM D6196–03 (Reapproved 2009), Standard Practice for Selection of Sorbents, Sampling, and Thermal Desorption Analysis Procedures for Volatile Organic Compounds in Air, (Approved March 1, 2009).
- 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).
- ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy.
- ASTM D6420–99 (Reapproved 2010), Standard Test Method for Determination of Gaseous Organic

Compounds by Direct Interface Gas Chromatography-Mass Spectrometry.

- ASTM UOP539–12, Refinery Gas Analysis by GC.
- BS EN 14662–4:2005, Ambient air quality—Standard method for the measurement of benzene concentrations—Part 4: Diffusive sampling followed by thermal desorption and gas chromatography, June 27, 2005.
- EPA–454/B–08–002, Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Measurements, Version 2.0 (Final), March 2008.
- EPA–454/R–99–005, Meteorological Monitoring Guidance for Regulatory Modeling Applications, February 2000.
- ISO 16017–2:2003(E): Indoor, ambient and workplace air—Sampling and analysis of volatile organic compounds by sorbent tube/thermal desorption/capillary gas chromatography—Part 2: Diffusive sampling, May 15, 2003.
- Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources” Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003.⁴

The EPA has made, and will continue to make, these documents available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

IV. What is the rationale for our final decisions and amendments to the Petroleum Refinery NESHAP and NSPS?

A. Residual Risk Review for the Petroleum Refinery Source Categories

1. What did we propose pursuant to CAA section 112(f) for the Petroleum Refinery source categories?

The results of our residual risk review for the Petroleum Refinery source categories were published in the June 30, 2014 proposal at (79 FR 36934 through 36942), and included assessment of chronic and acute inhalation risk, as well as multipathway and environmental risk, to inform our decisions regarding acceptability and ample margin of safety. The results indicated that both the actual and

⁴ The requirements in § 63.655(i)(5)(iii)(G) associated with this incorporation by reference have not changed, but are being modified to properly be incorporated into § 63.14(s).

allowable inhalation cancer risks to the individual most exposed are no greater than approximately 100-in-1 million, which is the presumptive limit of acceptability. In addition, the maximum chronic non-cancer target organ-specific hazard index (TOSHI) due to inhalation exposures was less than 1. The evaluation of acute non-cancer risks, which was conservative, showed acute risks below a level of concern. Based on the results of the refined site-specific multipathway analysis, we also concluded that the ingestion cancer risk to the individual most exposed through ingestion is considerably less than 100-in-1 million. In determining risk acceptability, we also evaluated population impacts because of the large number of people living near facilities in the source category. We estimated that 5-million people are exposed to increased cancer risks of greater than 1-in-1 million and 100,000 people are exposed to increased cancer risks of greater than 10-in-1 million, but, as noted previously, no individual is exposed to increased cancer risks of greater than 100-in-1 million. Considering the above information, we proposed that the risks remaining after implementation of the existing NESHAP for the Refinery MACT 1 and 2 source categories is acceptable. However, we noted that the risks based on allowable emissions are at the presumptive limit of acceptable risk, and that a large number of people are exposed to risks of greater than 1-in-1 million, and we solicited comment on whether EPA should conclude that the risk was unacceptable based on the health information before the Agency. We also proposed that the original Refinery MACT 1 and 2 MACT standards, along with the proposed requirements for storage vessels, provide an ample margin of safety to protect public health. Finally, we proposed that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

2. How did the risk review change for the Petroleum Refinery source categories?

As part of the final risk assessment, we conducted a screening level analysis of how the information we received during the public comment period, along with the changes we are making to the proposed rule, would change our proposed risk estimates (More details can be found in the "Final Residual Risk Assessment for the Petroleum Refining Source Sector", Docket ID No. EPA-HQ-OAR-2010-0682).

First, we received approximately 20 emissions inventory updates for specific facilities. These updates included revised emission estimates, revised release latitude/longitude locations and other release characteristic revisions. The updates provided evidence that the quantity of HAP emitted at these specific facilities is lower than considered in the risk modeling for the proposed rule. Our assessment of the effects of these changes suggests that the cancer maximum individual risk (MIR) based on actual emissions may be closer to 40-in-1 million, as opposed to 60-in-1 million, as projected at proposal. We did not quantify the reductions in chronic or acute non-cancer risks from these updates. We calculated allowable emissions using the Refinery Emissions Model (REM), which estimates emissions based on each refinery's capacities and throughputs [See discussion at 79 FR 36888, June 30, 2014.] The allowable emission estimates for point and fugitive sources were not specific to a particular latitude/longitude location so we assumed them to release from the centroid of the facility. Therefore, the predicted cancer MIR of approximately 100-in-1 million based on allowable emissions and reported in the proposal risk characterization does not change based on the submitted emissions revisions. We did not quantify changes to other actual risk metrics as part of the screening level analysis (*i.e.*, incidence, populations in risk bins, multipathway and ecological analyses), but we would expect some minor reductions from those presented in the proposed risk characterization.

Second, we are establishing work practice standards in the final rule for PRD releases and emergency flaring events, which under the proposed rule would not have been allowed. Thus, because we did not consider such non-routine emissions under our risk evaluation for the proposed rule, we performed a screening assessment of risk associated with these non-routine events for the final rule. [We provide further details on the screening approach in "Final Residual Risk Assessment for the Petroleum Refining Source Sector" in Docket ID No. EPA-HQ-OAR-2010-0682.] We extracted information on these events from the 2011 Petroleum Refinery ICR data that included the process unit identification, mass of emissions, duration of release, and description of the incident. We identified the highest HAP mass releases for both PRDs and flares from these non-routine events. We assumed these HAP emission releases could

occur at any facility in the source category. Our analysis suggests that these HAP emissions could increase the MIR based on actual emissions by as much as 2-in-1 million. Because the PRD and flaring events were the worst case HAP mass emission release events reported in the 2011 Refinery ICR for the source category, we are assuming that actual and allowable risks are no different for these events (*i.e.*, a MIR of 2-in-1 million). A MIR increase of 2-in-1 million attributable to these events, added to our previous estimate for allowable risk at proposal will not appreciably change our proposed determination that the MIR based on allowable emissions are approximately 100-in-1 million. We note that the MIR estimate attributable to these non-routine PRD and flaring events was estimated using a conservative, screening-level assessment, while the MIR estimate at proposal was based on a refined risk assessment. By adding a screening estimate to a refined risk estimate, we are merely defining an upper limit that we expect the combined risks from both the routine and non-routine emissions to be. Similarly, we estimate chronic non-cancer hazard index (HI) values attributable to the additional exposures resulting from non-routine flaring and PRD HAP emissions to be well below 1 ($HI_{immune-system}$ of 0.007) such that there is no appreciable change in the maximum chronic non-cancer HI of 0.9 estimated at proposal for routine emissions, which was based on neurological effects.

The screening analysis projects that the maximum predicted acute non-cancer risk from non-routine PRD and flare emissions results in a hazard quotient (HQ) based on a recommended reference exposure level limit (REL) of up to 14 from benzene emissions. While the analysis shows that there is a potential for HQs exceeding 1 for benzene, because of the many uncertainties and conservative nature of this screening analysis, the likelihood of such exposure and risk are low. At proposal, we projected a HQ based on the REL for benzene of up to 2 from routine emissions. If we conservatively combine the routine and non-routine emissions analyses, we would expect the potential for HQs based on the REL for benzene to have the potential to increase above 2. However, as projected at proposal, we estimate that the acute HQs calculated using acute exposure guideline levels (AEG) and emergency response and planning guidelines (ERPG) values for all pollutants including benzene would still be well

below 1 considering both routine and non-routine emissions.

Considering all of these factors, we do not project risks to be significantly different from what we proposed. Based on the risk analysis, as informed by the screening level analysis based on information obtained during the comment period, we are finalizing our determination that the risk remaining after promulgation of the NESHAP is acceptable.

3. What key comments did we receive on the risk review and what are our responses?

We received numerous comments on the residual risk assessment analyses and results. We summarize the key comments received below, along with our responses. A complete summary of all public comments received and our responses are in the "Response to Comment" Document in the public docket (Docket ID No. EPA-HQ-OAR-2010-0682).

Comment: Several commenters agreed that the EPA has correctly concluded that the proposed rule requirements protect the public with an ample margin of safety from refinery emissions. Other commenters noted that EPA found residual risks remaining after implementation of the MACT standards to be acceptable, and in light of the acceptability determination argued that the proposed changes to the rule are not justified. The commenters noted that the EPA's detailed emissions inventory assessment and risk modeling results demonstrated that, at every U.S. refinery, category-specific risks are below the EPA's presumptive limit of acceptable risk (*i.e.*, cancer risk of less than 100-in-1 million).

Other commenters stated the EPA's risk estimates are understated and that the EPA should reduce the benchmark of what it considers acceptable lifetime cancer risk instead of the upper limit of 100-in-1 million. One commenter provided an extensive critique of the cancer, chronic and acute effects levels used in the risk assessment and recommended that the EPA use California Office of Environmental Health Hazard Assessment's (OEHHA) new toxicity values for several chemicals. The commenter provided some references for the approaches used to derive the California values. The commenter also asserted that risks would be unacceptable had these more protective values been used in the risk assessment. Some commenters stated the risks from petroleum refinery emissions are underestimated because the EPA did not but should have included interaction of multiple

pollutants, accounted for exposure to multiple sources, and assessed the cumulative risks from facility-wide emissions and multiple nearby sources impacting an area.

Response: The approximately 100-in-1 million benchmark was established in the Benzene NESHAP (54 FR 38044, September 14, 1989), which Congress specifically referenced in CAA section 112(f)(2)(B). While this presumptive level provides a benchmark for judging the acceptability of MIR, it is important to recognize that it does not constitute a rigid line for making that determination. The EPA considers the specific uncertainties of the emissions, health effects and risk information for the source category in question when deciding whether the risk posed by that source category is acceptable. In addition, the source category-specific decision of what constitutes an acceptable level of risk is a holistic one; that is, the EPA considers all potential health impacts—chronic and acute, cancer and non-cancer, and multipathway—along with their uncertainties, when determining whether the source category presents an unacceptable risk.

Regarding the comment that in light of the acceptability determination the proposed changes to the rule are not justified, we note that we also are required to ensure that the standards provide an ample margin of safety to protect public health. That analysis is separate from the acceptability analysis, and the determination of acceptability does not automatically lead us to conclude that the standards provide an ample margin of safety to protect public health.

Regarding the comments that the EPA should use the new California OEHHA values, we disagree. The EPA's chemical-specific toxicity values are derived using risk assessment guidelines and approaches that are well established and vetted through the scientific community, and follow rigorous peer review processes.⁵ The RTR program gives preference to the EPA values for use in risk assessments and uses other values, as appropriate, when those values are derived with methods and peer review processes consistent with those followed by the EPA. The approach for selecting appropriate toxicity values for use in the RTR Program has been endorsed by the Science Advisory Board (SAB).⁶

⁵ Integrated Risk Information System (IRIS). IRIS Guidance documents available at <http://www.epa.gov/iris/backgrd.html>.

⁶ <http://yosemite.epa.gov/sab/sabproduct.nsf/0/b031ddf79cfded38525734f00649caf1?OpenDocument&TableRow=2.3#2>.

The EPA scientists reviewed the information provided by the commenter regarding the California values and concluded that further information is needed to evaluate the scientific basis and rationale for the recent changes in California OEHHA risk assessment methods. The EPA will work on gathering the necessary information to conduct an evaluation of the scientific merit and the appropriateness of the use of California OEHHA's new toxicity values in the agency decisions. Until the EPA has completed its evaluation, it is premature to determine what role these values might play in the RTR process. Therefore, the EPA did not use the new California OEHHA toxicity values as part of this current action. For more detailed responses regarding appropriate reference values for specific pollutants, see the "Response to Comment" document in the public docket (Docket ID No. EPA-HQ-OAR-2010-0682).

Concerning comments that we should consider aggregate risks from multiple pollutants and sources, we note that we have done this to the extent it is appropriate to do so. We modeled whole-facility risks for both chronic cancer and non-cancer impacts to understand the risk contribution of the sources within the Petroleum Refinery source categories. The individual cancer risks for the source categories were aggregated for all carcinogens. In assessing non-cancer hazard from chronic exposures to pollutants that have similar modes of action or (where this information is absent) that affect the same target organ, we summed the HQs. This process creates, for each target organ, a TOSHI, defined as the sum of HQs for individual HAP that affect the same organ or organ system. Whole-facility risks were estimated based on the 2011 ICR emissions data obtained from facilities, which included emissions from all sources at the refinery, not just Refinery MACT 1 and 2 emission sources (*e.g.*, emissions were included for combustion units and units subject to the Hazardous Organic NESHAP, if present at the refinery). We disagree with the commenter's assertion that additional quantitative assessment of risks from sources outside the source category is required under the statute. The statute requires the EPA to provide the quantitative risk information necessary to inform RTR regulatory decisions, and to this end, the EPA conducted a comprehensive assessment of the risks associated with exposure to the HAP emitted by the source category and supplemented that with additional

information available about other possible concurrent and relevant risks.

Further, the risk assessment modeling accounts for the effects of multiple facilities that may be in close proximity when estimating concentration and risk impacts at each block centroid. When evaluating the risks associated with a particular source category, we combined the impacts of all facilities within the same source category and assessed chronic exposure and risk for all census blocks with at least one resident (*i.e.*, locations where people may reasonably be assumed to reside). The MIR considers the combined impacts of all sources in the category that may be in close proximity (*i.e.*, cumulative impact of all refineries).

Comment: Several commenters stated that the EPA underestimated exposure because emissions are underreported and underestimated. The commenters noted that for the risk assessment for the refineries rule, the EPA evaluated (1) the emissions reported to the agency pursuant to the 2011 Petroleum Refinery ICR as sources' "actual" emissions, and (2) the emissions the EPA estimates that the existing standards currently allow sources to emit using the REM, which it describes as "allowable" emissions. According to the commenters, both the EPA's "actual" and "allowable" emissions data sets are incomplete and undercount emissions, causing the EPA to significantly underestimate the resulting risk in its risk analysis. For example, the commenters noted that the EPA assumed the flare destruction efficiency to be 98 percent, while the EPA's own estimates suggest flare efficiency is 93.9 percent. The commenters also noted that the EPA has further understated risks by ignoring emissions during unplanned SSM events and by ignoring HAP for which no reference values are established. One commenter cited the TCEQ Emissions Event Database as evidence that SSM emissions are a severe public health problem because data show that nearly 1 million pounds of HAP are reported from Texas refineries between 2009 and 2013. According to these commenters, the EPA needs to adopt standards that provide greater protection, including protection from the risks of accidents.

Response: We used the best and most robust facility-specific HAP emissions inventory available to us, which was the 2011 ICR, in performing the analysis for the proposed rule. We conducted a thorough and exhaustive review of the data submitted through the ICR and we followed up on source-specific information on a facility-by-facility basis, as documented in the "Emissions Data Quality Memorandum and

Development of the Risk Model Input File" (see Docket ID No. EPA-HQ-OAR-2010-0682-0076). In addition, we took steps ahead of issuing the 2011 ICR to make sure that facilities could, as accurately as practicable, estimate their HAP emissions for purposes of responding to the inventory portion of that ICR. We prepared a Refinery Protocol to provide guidance to refinery owners or operators to use the best available, site-specific data when developing their emissions inventory, to ensure all emission sources are included in the inventory, and to have a consistent set of emission factors that all respondents use if no site-specific emissions data were available. If site-specific emissions data were available, sites were to use these data preferentially over the default factors. We developed the default factors provided in the protocol from the best data available at the time.

The ICR-submitted information for allowable emissions did not include emission estimates for all HAP and all emission sources. Consequently, we used the REM to estimate allowable emissions. The REM relies on model plants that vary based on throughput capacity. Each model plant contains process-specific default emission factors, adjusted for compliance with the Refinery MACT 1 and 2 emission standards.

We agree with the commenters that studies have shown that many refinery flares are operating less efficiently than 98 percent. Prior to proposing this rule, we conducted a flare ad hoc peer review to advise the EPA on factors affecting flare performance (see discussion in the June 30, 2014, proposal at 79 FR 36905). However, we disagree with the commenters that the risk analysis should consider this level of performance since the existing MACT standard does not allow it. For purposes of the risk analysis, we evaluate whether it is necessary to tighten the existing MACT standard in order to provide an ample margin of safety. Thus, in reviewing whether the existing standards provide an ample margin of safety, we review the level of emissions the MACT standards allow. In the present case, we considered the level of performance assumed in establishing the MACT standard for purposes of determining whether the MACT standard provides an ample margin of safety. However, we did recognize that facilities were experiencing performance issues with flares and that many flares were not meeting the assumed performance level at the time we promulgated the MACT standard. Thus, we proposed, and are finalizing,

revisions to the flare operating requirements to ensure that the flares meet the required performance level. These provisions are consistent with the EPA's goals to improve the effectiveness of our rules.

Similarly, we do not include startup, shutdown (including maintenance events) and malfunction emissions that are not allowed under the standard as part of our evaluation of whether the standards provide an ample margin of safety. Regarding the HAP emissions from SSM events that the commenter is concerned with, we note that our review of the TCEQ incident database indicates that many of the large reported release events were of SO₂ emissions and only a few had significant HAP emissions.

Because in the final rule we are establishing work practice standards for PRD and emergency flaring events, we performed a screening-level risk analysis to address changes in facility HAP emission releases due to these events. Details on this analysis are presented in the final risk report for the source category (For more details see Appendix 13 of the "Final Residual Risk Assessment for the Petroleum Refining Source Sector," Docket ID No. EPA-HQ-OAR-2010-0682).

As for HAP with no reference value, the SAB addressed this issue in its May 7, 2010, response to the EPA Administrator. In that response, the SAB Panel recommended that, for HAP that do not have dose-response values from the EPA's list, the EPA should consider and use, as appropriate, additional sources for such values that have undergone adequate and rigorous scientific peer review. The SAB panel further recommended that the inclusion of additional sources of dose-response values into the EPA's list should be adequately documented in a transparent manner in any residual risk assessment case study. We agree with this approach and have considered other sources of dose-response data when conducting our risk determinations under RTR. However, in some instances no sources of information beyond the EPA's list are available. Compounds without health benchmarks are typically those without significant health effects compared to compounds with health benchmarks, and in such cases we assume these compounds will have a negligible contribution to the overall health risks from the source category. A tabular summary of HAPs that have dose response values for which an exposure assessment was conducted is presented in Table 3.1-1 of the "Final Residual Risk Assessment for the Petroleum Refining Source Sector", Docket ID No. EPA-HQ-OAR-2010-0682.

Comment: A few commenters asserted that the EPA should decide that it is unjust and inconsistent with the CAA's health protection purpose to allow the high health risks caused by refineries to fall disproportionately on communities of color and lower income communities who are least equipped to deal with the resulting health effects. Because of that disparity, the commenter stated that the EPA should recognize that the risks found are unacceptable and set stronger national standards for all exposed Americans.

Response: For this rulemaking, the EPA conducted both pre- and post-control risk-based assessments with analysis of various socio-economic factors for populations living near petroleum refineries (see Docket ID Nos. EPA-HQ-OAR-2010-0682-0226 and -0227) and determined that there are more African-Americans, Other and multiracial groups, Hispanics, low-income individuals, and individuals with less than a high school diploma compared to national averages. In determining the need for tighter residual risk standards, the EPA strives to limit to no higher than 100-in-1 million the estimated cancer risk for persons living near a plant if exposed to the maximum pollutant concentration for 70 years and to protect the greatest number of persons to an individual lifetime risk of no higher than 1-in-1 million. Although we consider the risk for all people regardless of racial or socioeconomic status, communities near petroleum refineries will particularly benefit from the risk reductions associated with this rule. In particular, as discussed later, the fenceline monitoring work practice standard will be a further improvement in the way fugitive emissions are managed and will provide an extra measure of protection for surrounding communities.

4. What is the rationale for our final decisions for the risk review?

As described in section IV.A.2 of this preamble, we performed a screening-level analysis to assess the risks associated with inventory updates we received for specific facilities and with emissions events that were previously not included in the risk assessment because the proposed rule did not allow them. Because we are finalizing work practice standards to regulate emission events associated with PRD releases and emergency flaring, we considered the effect these work practice standards would have on risks. As discussed in section IV.A.2 of this preamble, we project that accounting for these emergency events in the baseline risks after implementation of the MACT

standards does not appreciably change the risks, and at most, could increase the proposed rule estimate of MIR by approximately 2-in-1 million. Therefore, we would project that any controls applied to these emergency events, including the work practice standards for PRDs and emergency flaring in this final rule, would not appreciably change the proposed post-control risks. Although we would anticipate minimal additional risk reductions, we reviewed more stringent alternatives to the work practice standards for PRD releases and emergency flaring events included in this final rule, and we found that the costs of increasing flare capacity to control all PRD releases and to eliminate all visible emissions during emergency flaring were too high. We estimate the capital costs of applying the velocity and visible emissions limit at all times would be approximately \$3 billion, and we estimate that the costs of controlling all PRD releases with flares would be approximately \$300 million. [See the discussion in the "Flare Control Option Impacts for Final Refinery Sector Rule", Docket ID No. EPA-HQ-OAR-2010-0682 and the PRD work practice standard discussion in section IV.C of this preamble.] Further, we did not receive comments on additional control technologies that we should have considered for other emission sources (e.g., tanks, DCUs) beyond those considered and described at proposal. Consequently, as discussed in section IV.A.2, we conclude that the risks from the Petroleum Refinery source categories are acceptable and that, with the additional requirements for storage vessels that we are finalizing, as proposed, the Refinery MACT 1 and 2 rules provide an ample margin of safety to protect public health. We also maintain, based on the rationale presented in the preamble to the proposed rule, that the current standards prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect.

B. Technology Review for the Petroleum Refinery Source Categories

1. What did we propose pursuant to CAA section 112(d)(6) for the Refinery MACT 1 (40 CFR part 63, subpart CC) source category?

The results of our technology review for the Petroleum Refinery source categories were published in the June 30, 2014, proposal at (79 FR 36913 through 36928). The technology review was conducted for both MACT source categories as described below.

a. Refinery MACT 1

Refinery MACT 1 sources include MPV, storage vessels, equipment leaks, gasoline loading racks, marine vessel loading operations, cooling towers/heat exchange systems and wastewater. Based on technology reviews for the sources described above, we proposed that it was not necessary to revise Refinery MACT 1 requirements for MPV, gasoline loading racks, cooling towers/heat exchange systems, and wastewater. For storage vessels, we proposed revisions pursuant to the technology review. Specifically, we proposed to cross-reference the storage vessel requirements in the Generic MACT (40 CFR part 63, subpart WW) to require controls on floating roof fittings (e.g., guidepoles, ladder wells and access hatches) and to revise the definition of Group 1 storage vessels to include smaller tanks with lower vapor pressures. For equipment leaks, we proposed to allow refineries to meet LDAR requirements in Refinery MACT 1 by monitoring for leaks via optical gas imaging in place of the EPA Method 21, using monitoring requirements to be specified in a not-yet-proposed appendix K to 40 CFR part 60. For marine vessel loading, we proposed to amend the Marine Tank Vessel Loading Operations MACT standards (40 CFR part 63, subpart Y) to require small marine vessel loading operations (*i.e.*, operations with HAP emissions less than 10/25 tpy) and offshore marine vessel loading operations at petroleum refineries to use submerged filling based on the cargo filling line requirements in 46 CFR 153.282.

We also proposed an additional work practice standard under the technology review to manage fugitive emissions from the entire petroleum refinery through a fenceline monitoring and corrective action standard. As part of the work practice standard, we specified the monitoring technology and approach that must be used, and we developed a fenceline benzene concentration action level above which refinery owners or operators would be required to implement corrective action to reduce their fenceline concentration to below this action level. The action level we proposed was consistent with the emissions projected from fugitive sources compliant with the provisions of the refinery MACT standards as modified by the additional controls proposed for storage vessels.

b. Refinery MACT 2

The Refinery MACT 2 source category regulates HAP emissions from FCCU, CRU and SRU process vents. We

proposed to revise Refinery MACT 2 to incorporate the developments in monitoring practices and control technologies reflected in Refinery NSPS subpart Ja (73 FR 35838). This included proposing to incorporate the Refinery NSPS subpart Ja PM limit for new FCCU sources and to revise the monitoring provisions in Refinery MACT 2 to require all FCCU sources to meet operating limits consistent with the requirements in Refinery NSPS subpart Ja. The existing MACT standard provided that a refiner could demonstrate compliance with the PM limit in the MACT by meeting the 30-percent opacity limit requirement of Refinery NSPS subpart J; we proposed to eliminate that provision and instead establish control device operating limits or site-specific opacity limits similar to those required in Refinery NSPS subpart Ja. We also proposed to incorporate the use of 3-hour averages rather than daily averages for monitoring data to demonstrate compliance with the FCCU site-specific opacity and Ni operating limits. We proposed additional control device-specific monitoring alternatives for various control devices on FCCU, including BLD monitoring as an option to COMs for owners or operators of FCCU using fabric filter-type control systems, and total power and secondary current operating limits for owners or operators of ESPs. We also proposed to add a requirement to perform daily checks of the air or water pressure to atomizing spray nozzles for owners or operators of FCC wet gas scrubbers. Finally, we proposed to require a performance test once every 5 years for all FCCU in place of the one-time performance test required by the current Refinery MACT 2.

At proposal, we did not identify any developments in practices, processes and control technologies for CRU process vents based on our technology review. For SRU, we proposed to include the Refinery NSPS subpart Ja allowance for oxygen-enriched air as a development in practice and to allow SRU to comply with Refinery NSPS subpart Ja as a means of complying with Refinery MACT 2.

2. How did the technology review change for the Petroleum Refinery source categories?

a. Refinery MACT 1

We are finalizing most of our technology review decisions for Refinery MACT 1 emissions sources as proposed; however, as described briefly below, we are revising certain proposed requirements.

We are not taking final action adopting the use of appendix K to 40 CFR part 60 for optical gas imaging for refinery equipment subject to the LDAR requirements in Refinery MACT 1 because we have not yet proposed appendix K.

After considering the public comments, we are finalizing the proposed fenceline monitoring requirements, with a few revisions. First, we have made numerous clarifications in this final rule to the language for the fenceline monitoring siting method and analytical method (*i.e.*, Methods 325 A and B, respectively). Specific comments on these methods, along with our responses and explanations of the revisions to the regulatory text are discussed in the "Response to Comment" document. Second, we are finalizing a revised compliance schedule for fenceline monitoring, which will require refinery owners or operators to have the fenceline monitors in place and collecting benzene concentration data no later than 2 years from the effective date of the final rule, as opposed to 3 years in the proposed rule. Third, we have removed the requirement for refinery owners or operators to obtain the EPA approval for the corrective action plan. Fourth, we are requiring the submittal of the fenceline monitoring data on a quarterly basis, as opposed to on a semiannual basis as proposed. Fifth, we are providing guidelines for operators to use in requesting use of an alternative fenceline monitoring technology to the passive sorbent samplers set forth in Method 325B. Finally, to reduce the burden of monitoring, we are finalizing provisions that would allow refinery owners or operators to reduce the frequency of fenceline monitoring for areas that consistently stay well below the fenceline benzene concentration action level. Specifically, we are allowing refinery owners or operators to monitor every other two weeks (*i.e.*, skip period monitoring) if over a two-year period, each sample collected at a specific monitoring location is at or below 0.9 $\mu\text{g}/\text{m}^3$. If every sample collected from that sampling location during the subsequent 2-years is at or below 0.9 $\mu\text{g}/\text{m}^3$, the monitoring frequency may be reduced from every other two weeks to quarterly. After an additional two years, the monitoring can be reduced to semiannually and finally to annually, provided the samples continue to be at or below 0.9 $\mu\text{g}/\text{m}^3$ during all sampling events at that location. If at any time a sample for a monitoring location that is monitored at a reduced frequency

returns a concentration greater than 0.9 $\mu\text{g}/\text{m}^3$, the owner or operator must return to the original sampling requirements for one quarter (monitor every two weeks for the next six monitoring periods for that location); if every sample collected from this quarter is at or below 0.9 $\mu\text{g}/\text{m}^3$, then the sampling frequency reverts back to the reduced monitoring frequency for that monitoring location; if not then the sampling frequency reverts back to the original biweekly monitoring frequency.

b. Refinery MACT 2

We are finalizing, as proposed, our determination that it is not necessary to revise the requirements for CRU pursuant to the technology review and we are finalizing our determination that it is necessary to revise the MACT for SRU and FCCU. For SRU, we are finalizing the revisions as proposed. For FCCU, we are making modifications to the proposed requirements in light of public comment.

As discussed previously, we proposed to remove the alternative in Refinery MACT 2 for owners or operators to demonstrate compliance with the PM limits on FCCU by meeting a 30-percent opacity standard as provided in Refinery NSPS subpart J and instead make the FCCU operating limits in Refinery MACT 2 consistent with Refinery NSPS subpart Ja. Based on the Refinery NSPS subpart J review in 2008, we determined that a 30-percent opacity limit does not adequately assure compliance with the PM emissions limit (see discussion in the proposed rule at 79 FR 36929, June 30, 2014). Thus, we included other monitoring approaches in Refinery NSPS subpart Ja.

Comments received on this proposal, along with data available to the Agency, confirmed that the 30-percent opacity standard is not adequate on its own to demonstrate compliance with the PM (or metal HAP) emissions limit in Refinery MACT 2. We also received comments that the site-specific opacity alternative, which is the only compliance option proposed for FCCU with tertiary cyclones, would essentially require owners or operators with these FCCU configurations to meet an opacity limit of 10-percent. According to commenters, opacity increases with decreasing particle size, so that it is common to exceed 10-percent opacity during soot blowing or other similar events that produce very fine particulates even though mass emissions have not changed appreciably.

Based on the available data, we have determined that a 20-percent opacity operating limit is well correlated with

facilities meeting a limit of 1.0 lb PM/1,000 lbs coke burn-off. Therefore, we are retaining the option in Refinery MACT 2 to comply with Refinery NSPS subpart J except we are adding a 20-percent opacity operating limit in Refinery MACT 2, evaluated on a 3-hour basis. To ensure that FCCU owners or operators complying with the Refinery NSPS subpart J option can meet the 1.0 lb PM/1,000 lbs emissions limit at all times, we are finalizing requirements that owners or operators conduct the performance test during higher PM periods, such as soot blowing. Where the PM emissions are within 80-percent of the PM limit during any periodic performance test, we are requiring the refinery owner or operator to conduct subsequent performance tests on an annual basis instead of on a 5-year basis.

We are finalizing our proposed requirement that compliance with the control device operating limits in the other compliance alternatives be demonstrated on a 3-hour basis, instead of the 24-hour basis currently allowed in Refinery MACT 2.

3. What key comments did we receive on the technology review, and what are our responses?

a. Refinery MACT 1

The majority of comments received regarding the proposed amendments to Refinery MACT 1 pursuant to our technology review dealt with the proposed fenceline monitoring requirements. The primary comments on the fenceline monitoring requirements are in this section along with our responses. Comment summaries and the EPA's responses for additional issues raised regarding the proposed requirements resulting from our technology review are in the "Response to Comment" document in the public docket (Docket ID No. EPA-HQ-OAR-2010-0682).

i. Legal Authority and Need for Fenceline Monitoring

Comment: Numerous commenters claimed that the proposed fenceline monitoring program would unlawfully impose what is effectively an ambient air quality standard for benzene, which is not authorized by CAA section 112, which only authorizes the control of emission sources. The commenters argued it is an ambient standard because sources are required to meet the benzene level set or "perform injunctive relief which may or may not address the source of the benzene." The commenter quoted language from the proposal as support that EPA has described the benzene level as an ambient standard:

"We are proposing a HAP concentration to be measured in the ambient air around a refinery, that if exceeded, would trigger corrective action to minimize fugitive emissions." 79 FR at 36920 (June 30, 2014). The commenter further noted that this requirement is not just "monitoring" because it establishes a "not-to-be exceeded" level. Therefore, the commenters stated, the EPA should not finalize this portion of the proposal.

Response: We disagree with the comment that the fenceline proposal is an ambient air standard. First, the owner or operator must place the monitors on the facility fenceline to measure emissions from the facility, *i.e.*, on the property of the refiner. While we recognize that we used the term "ambient air" in the preamble to the proposal, we note that the placement requirements for the monitors make clear that the monitors are not monitoring ambient air, which EPA has defined at 40 CFR 50.1(e) as "that portion of the atmosphere, external to buildings, to which the general public has access." Second, the proposed EPA Method 325A sets out procedures to subtract background concentrations and contributions to the fenceline benzene concentrations from non-refinery emission sources, so that the benzene concentrations measured are attributable to the refinery. In other words, the fenceline monitoring work practice standard uses a benzene concentration difference, referred to as the ΔC (essentially an upwind and downwind concentration difference) to isolate the refinery's emissions contribution.

Furthermore, we disagree that the fact that refiners are required to perform corrective action if the fenceline benzene concentration action level is exceeded makes the benzene action level an ambient standard. As an initial matter sources are not directly responsible for demonstrating that an area is meeting an ambient standard; rather that burden falls on states. See *e.g.*, CAA section 110(a)(2). Moreover, the "corrective action" is simply that sources must ensure that fugitive emission sources on the property are not emitting HAP at levels that will result in exceedances of the fenceline benzene concentration action level. In other words, the purpose of the fenceline monitoring work practice is to ensure that sources are limiting HAP emissions at the fenceline, which are solely attributable to emissions from sources within the facility. In fact, the fenceline benzene concentration action level was established using emissions inventories reported by the facilities, assuming

compliance with the MACT standards. Finally, monitoring is conducted as part of the work practice standard to identify sources that will require additional controls to reduce their impact on the fenceline benzene concentration. In that sense, the fenceline monitoring work practice standard is not different than, for example, our MACT standard for refinery heat exchangers. If a facility is exceeding the relevant cooling water pollutant concentration "level" when it performs a periodic test, it must undertake corrective action to bring the concentration down below the action level.

Comment: Several commenters noted that EPA's authority under section 112(d) is to set "emissions standards" and quoted the CAA definition of that term: "A requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this Act." 42 U.S.C. 7602(k). The commenters argued that the proposed fenceline monitoring standard does not meet this definition because it would not "limit the quantity, rate, or concentration of emissions" from any given emissions point. Also, the commenters claimed that the EPA did not designate fenceline monitoring as a work practice under CAA section 112(h) since the EPA did not even mention CAA section 112(h), nor did it conduct any analysis to show that fenceline monitoring meets the CAA section 112(h) factors.

Response: We disagree with the commenters' assertion that the proposed fenceline monitoring work practice standard is not authorized under CAA section 112(d)(6). Contrary to the commenter's claims, we specifically proposed the fenceline monitoring standard under CAA section 112(d)(6) to be a work practice standard that is applied broadly to fugitive emissions sources located at petroleum refineries. As discussed above, the proposed standard does more than impose monitoring as some commenters suggested; it also will limit emissions from refineries because it requires the owner or operator to identify and reduce HAP emissions through a monitoring and repair program, as do many work practice standards authorized under CAA Section 112(h) and 112(d).

We note that the sources addressed by the fenceline monitoring standard—refinery fugitive emissions sources such as wastewater collection and treatment

operations, equipment leaks, heat exchange systems and storage vessels in the Refinery MACT 1 rule—are already subject to work practice standards. Our review of these requirements indicates that this fenceline monitoring work practice standard would be a further improvement in the way fugitive emissions are managed and would provide an extra measure of protection for surrounding communities. The commenter claims EPA did not analyze how the fenceline monitoring requirement meets the criteria in section 112(h). However, that is a misinterpretation of how the criteria apply. The criteria are assessed with regard to whether it is feasible to “prescribe or enforce an emission standard for a source”, and do not apply to the work practice standard. Consistent with the criteria in section 112(h)(2), we determined and established that work practice standards are appropriate for these Refinery MACT fugitive emissions at the time we established the initial MACT standard. In the proposal, (79 FR at 36919, June 30, 2014), we reaffirmed that it is impracticable to directly measure fugitive emission sources at refineries but did not consider it necessary to reiterate these findings as part of this proposal to revise the existing MACT for these sources under CAA section 112(d)(6). We note that the commenters do not provide any grounds to support a reevaluation of whether these fugitive emission sources are appropriately regulated by a work practice standard.

Comment: Several commenters questioned the EPA’s authority under the CAA to promulgate a rule that amounts to an ongoing information gathering and reporting obligation. The commenters stated that the EPA has not demonstrated that the proposed fenceline monitoring program represents an actual emission reduction technology improvement. A commenter stated that compliance assurance methods, including monitoring, for fugitive emissions and other emission standards are established as part of the emission standard and EPA’s authority to gather information that is not directly required for compliance with a specific standard but is related to air emissions is found in CAA section 114. Under CAA section 114, the requirement must be related to one of the stated purposes and must be reasonable. The commenter did not believe that the EPA has demonstrated that the costs of fenceline monitoring are reasonable in light of the information already available to the EPA and in light of many other means by

which the EPA could obtain such information.

Response: We disagree with the commenters’ assertion that the authority for the fenceline monitoring requirement falls under CAA section 114 and not CAA section 112(d) because it is an “ongoing information gathering and reporting obligation.” The issue here is not whether EPA could have required the fenceline monitoring requirement under CAA section 114, but rather did EPA support that it was a development in processes practices or controls technology under section 112(d)(6).

As an initial matter, we disagree with the commenters’ characterization of the fenceline monitoring standard as “an information gathering and reporting obligation.” We have repeatedly stated that we consider the fenceline monitoring requirement to be a work practice standard that will ensure sources take corrective action if monitored benzene levels (as a surrogate for HAP emissions from fugitive emissions sources) exceed the fenceline benzene concentration action level. The standard requires refinery owners or operators to monitor the benzene concentration at the refinery perimeter, to evaluate the refinery’s contribution as estimated by taking the concentration difference between the highest and lowest concentrations (ΔC) in each period, and to conduct root cause analysis and take corrective action to minimize emissions if the concentration difference is higher (on an annual average) than the benzene concentration action level. Thus, the fenceline monitoring requirement goes well beyond “information gathering and reporting.”

In addition, the commenters again read section 112(d)(6) too narrowly by suggesting that a program considered as a development must be a “technology” improvement. Section 112(d)(6) of the CAA requires the EPA to review and revise the MACT standards, as necessary, taking into account developments in “practices, processes and control technologies.” Consistent with our long-standing practice for the technology review of MACT standards, in section III.C of the proposal (see 79 FR 36900, June 30, 2014), we list five types of “developments” we consider. Fenceline monitoring fits squarely within two of those five types of developments (emphasis added):

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards.
- Any work practice or operational procedure that was not identified or

considered during development of the original MACT standards.

As used here, “other equipment” is clearly separate from and in addition to “add-on control” technology and is broad enough to include monitoring equipment. In this case, fenceline monitoring is a type of equipment that we did not identify and consider during development of the original MACT standards. Additionally, the fenceline standard is a work practice standard, involving monitoring, root cause analysis and corrective action not identified at the time of the original MACT standards. Therefore, the fenceline requirements are a development in practices that will improve how facilities manage fugitive emissions and EPA appropriately relied on section 112(d)(6) in requiring this standard.

Comment: Some commenters contended that because the fenceline monitoring standard is in essence an ambient standard, the only justification that can be used to support it would be under CAA section 112(f)(2). The commenters stated that EPA determined that the MACT standards pose an acceptable level of risk and protect the public health with an ample margin of safety and thus, section 112(f) does not support imposition of the fenceline monitoring requirement. Several commenters stated that the Agency expressly acknowledges that imposition of additional emission standards for fugitive emissions from refinery sources are not warranted under CAA section 112(f). Some commenters suggested that because the existing MACT standards protect public health with an ample margin of safety, the fenceline monitoring requirement imposes an unnecessary burden on industry because it is not necessary to achieve acceptable risk or provide an ample margin of safety.

Response: EPA is not relying on section 112(f)(2) as the basis for the fenceline monitoring requirement. As provided in a previous response to comment, we disagree with the commenters that the fenceline monitoring requirement is an ambient standard and therefore, we do not need to consider what authority would be appropriate for establishing an ambient standard that would apply to fugitive sources of emissions at refineries. We also disagree with the commenters who suggest that EPA may not require fenceline monitoring pursuant to section 112(d)(6) because EPA has not determined that fenceline monitoring is necessary to ensure an acceptable level of risk or the provide an ample margin of safety. Section 112(d)(6) does not

require EPA to factor in the health considerations provided in section 112(f)(2) when making a determination whether it is “necessary” to revise the MACT.

Comment: Commenters stated that the pilot studies undertaken by the EPA and pilot studies undertaken by the refining industry (see the API Fenceline Study in the docket for this rulemaking) demonstrate either that there is no underestimation of emissions and thus, no need for the fenceline monitoring work practice standard, or that fenceline benzene data cannot be used to validate emission estimates. Commenters stated that none of the refineries in the API study of the proposed refinery fenceline standard had study-averaged ΔC concentrations that exceeded the proposed action level of $9 \mu\text{g}/\text{m}^3$ and thus the study provides some evidence that U.S. refineries are not underestimating emissions. Furthermore, the commenter stated that there is significant ambient air monitoring performed that further supports low benzene concentrations in the vicinities of refineries and cited ambient monitoring data collected by the Southeast Texas Regional Planning Commission Air Quality Group and the Texas Commission on Environmental Quality (TCEQ).

Response: We disagree that the API fenceline study demonstrates that there is no underestimation of emissions. The API report referred to by the commenter actually shows higher ΔC concentrations than what we expected, when we compare the distribution of ΔC 's presented in the API fenceline study to the distribution of benzene concentrations at the 142 refineries we modeled (see memorandum “Fenceline Ambient Benzene Concentrations Surrounding Petroleum Refineries”, EPA-HQ-OAR-2010-0682-0208). [Note that API did not identify the facilities in their study, so we were not able to perform a one-to-one comparison of the measured ΔC concentrations with the modeled fenceline concentrations.] Furthermore, the API conducted the study primarily during the fall and winter months (October to March) when the ambient temperatures are lower than the annual averages. While this may not impact equipment leak emissions, temperature can have a significant impact on emissions from storage vessels and wastewater treatment systems, so it is likely that the annual average ΔC for the facilities tested could be higher than the “winter” averages measured in the API study. Based on our review of the API study data, we interpret the results to indicate that there may be higher concentrations of

benzene on the fenceline attributable to fugitive emissions than anticipated at some facilities. These studies are an indication that the standard we are finalizing will achieve the goal of ensuring that the owners or operators manage fugitive emissions within the refinery.

This regulatory approach also fits with the EPA's goals to improve the effectiveness of rules. Specifically, in this case, we are improving the effectiveness of the rule in two ways. First, we are establishing a fenceline benzene trigger to manage overall fugitive HAP emissions, rather than establishing further requirements on many individual emission points. Secondly, the rule incentivizes facilities to reduce fugitive HAP emissions below the fenceline benzene trigger by providing regulatory options for reduced monitoring.

Regarding ambient monitoring data, we note that existing ambient monitors are not located at the fenceline; they are located away from sources, and concentrations typically decrease exponentially with distance from the emissions source. We are encouraged that data referenced by the commenter indicate that ambient levels of benzene are within levels that are protective of human health in communities, but note that analysis of benzene concentrations in communities does not necessarily indicate that refineries located near these communities are adequately managing their fugitive HAP emissions.

Comment: Several commenters reiterated that they do not believe the proposed fenceline monitoring is a technology development for equipment leaks, storage vessels or wastewater sources. However, if the EPA finalizes the fenceline monitoring requirements, the commenters suggested that there is no longer a need or regulatory basis for imposing both the fenceline monitoring requirements and the existing MACT standards for fugitive HAP emission sources. Thus, the EPA should remove the current MACT requirements for LDAR, storage vessels and wastewater handling and treatment from Refinery MACT 1 if the EPA promulgates fenceline monitoring. Addition of fenceline monitoring on top of the existing MACT requirements, they argue, would violate the Executive Order 12866 mandate to avoid redundant, costly regulatory requirements that provide no emission reductions.

Response: We disagree that the fenceline monitoring standards we are finalizing in this rule are redundant to MACT emissions standards for fugitive HAP emissions sources. The MACT

standards impose requirements on fugitive HAP emissions sources consistent with the requirements in CAA section 112(d)(2) & (3), and the fenceline monitoring requirement is not a replacement for those requirements. Rather, based on our review of these standards, we concluded that fenceline monitoring is a development in practices, processes or control technologies that would improve management of fugitive emissions in a cost-effective manner. In selecting this development as an across-the-board means of improving management of fugitive emissions, we rejected other more costly developments that would have applied independently to each fugitive emissions source. Requiring refineries to establish a fenceline monitoring program that identifies HAP emission sources that cause elevated benzene concentrations at the fenceline and correcting high emissions through a more focused effort augments but does not replace the existing requirements. We found that, through early identification of significant fugitive HAP releases through fenceline monitoring, compliance with the existing MACT standards for these emissions sources could be improved and that it was necessary to revise the existing standards because fenceline monitoring is a cost-effective development in processes, practices, and control technologies.

We note that the existing MACT requirements are based on the MACT floor (the best performers), and as such, provide a significant degree of emission reductions from the baseline. The action level for the fenceline work practice standard, by contrast, is not based on the best performers but rather on the highest value expected on the fenceline from any refinery, based on the modeling of refinery emission inventories. As such it is not representative of the best performers and could not be justified as meeting the requirements of section 112(d)(2) and (3). If we were to remove the existing standards for fugitive emission sources at the refinery, we would not be able to justify that sources are meeting the level of control we identified as the MACT floor when we first promulgated the MACT. Nor could we justify the fenceline monitoring program we are promulgating as representing the MACT floor because we considered cost (and not the best performers as previously noted) in identifying the components of the program. Although the fenceline monitoring standard on its own cannot be justified as meeting the MACT floor requirement for each of the separate

types of fugitive emission sources, that does not mean that it is not an effective enhancement of those MACT requirements. To the contrary, it works in tandem with the existing MACT requirements to provide improved management of fugitive emissions and, in that sense, it is precisely the type of program that we believe Congress had in mind when enacting section 112(d)(6).

ii. Rule Should Require Real-Time Monitoring Technology for Fenceline Monitoring.

Comment: Numerous commenters stated that the proposed fenceline standards, which require monitoring using 2-week integrated passive samplers, are flawed and weak for a number of reasons, including that the monitoring method does not provide real-time data, does not provide adequate spatial coverage of the fenceline, and does not provide a mechanism to identify the specific emission source impacting the fenceline to manage fugitive emissions. Several commenters suggested that this monitoring technology is not state of the art. They claimed that there are superior systems in place at refineries that are technically and economically feasible, including at Shell Deer Park, Texas; BP Whiting, Indiana; and Chevron Richmond, California. Further, they claimed that these systems more effectively achieve the objective of reducing fugitive emissions. They claimed several systems are superior to the proposed system, including open-path systems such as ultraviolet differential optical absorption (UV DOAS) and Fourier transform infrared spectroscopy (FTIR), as well as point monitors such as gas chromatographs. A number of commenters suggested that open-path monitors should be required, stating that this technology is capable of providing real-time analysis and data on air pollution, is able to analyze multiple pollutants simultaneously at low, near-ambient concentrations, and is capable of providing more complete geographic coverage.

The commenters also stated that the benefits of real-time monitors are particularly important in communities close to refineries, where they believe refinery emissions are a major source of toxic pollutants and short-term upset events that can have significant public health impacts. In particular, the commenters stated that open-path monitors promote an individual's right-to-know, in real-time, about harmful pollution events affecting their communities, and will allow refinery owners or operators to immediately identify fugitive emissions and

undertake swift corrective action to reduce these emissions. Some commenters suggested that, if the EPA rejects these open-path real-time monitors, then at a minimum the EPA should require the use of active daily monitoring, such as auto-gas chromatograph (GC) systems.

Finally, a number of commenters recommended that the EPA provide sufficient flexibility in its regulations to allow state and local jurisdictions to develop, demonstrate, and subsequently require the use of alternative monitoring programs, provided these monitoring programs are at least equivalent to those in the final rule.

Response: We understand that many commenters believe real-time monitoring would not only help refinery owners or operators in identifying emission sources, but also would warn the community of releases in real time.

Both open-path systems and active sampling systems (such as auto-GCs) mentioned by the commenters, are monitoring systems capable of yielding monitoring data quickly—ranging from a few minutes to about a day. However, these “real-time” systems have not been demonstrated to be able to achieve all of the goals stated by the commenters—specifically, able to provide real-time analysis and data on multiple pollutants simultaneously at low-, near-ambient concentrations, with more complete geographic (or spatial) coverage of the fenceline.

The real-time open-path systems suggested by the commenters are all limited in that they are not sensitive enough to detect benzene at the levels needed to ensure that fenceline monitoring achieves its intended goal. The fenceline monitoring system needs to be capable of measuring at sub-ppbv levels—well below the $9 \mu\text{g}/\text{m}^3$ fenceline benzene concentration action level in the final rule, in order to determine the ΔC . In the proposal, we discussed two open-path monitoring technologies, FTIR and UV-DOAS. For the proposed rule, we analyzed the feasibility of employing UV-DOAS over FTIR because the UV-DOAS is more sensitive to detection of benzene than FTIR, as we described in the proposal. We reviewed performance data on several UV-DOAS systems in support of the proposed rule, and for this final rule, we considered information submitted during the comment period. We found that the lowest detection limit reported for any commercially-available UV-DOAS system is on the order of 3 ppbv over a 200-meter path length, whereas the fenceline benzene concentration action level is 2.8 ppbv (equivalent concentration to $9 \mu\text{g}/\text{m}^3$).

This system is being installed at the Shell Deer Park refinery but has not been field validated yet. Thus, we do not yet know the detection capabilities of the system, as installed. Based on the lowest reported detection limit, it cannot achieve the detection levels needed to demonstrate compliance with the fenceline standard in this final rule. This system also will only cover approximately 5 percent of the fenceline at Shell Deer Park, instead of the full fenceline coverage of the passive diffusive tube monitoring system we proposed. Facilities would have to deploy a monitoring system consisting of many open-path monitors to achieve the same spatial coverage as the passive diffusive tube monitoring system.

For the final rule, we also reviewed other UV-DOAS systems in operation at refineries that commenters identified. However, reported detection limits for these systems are even higher than for the type of system being installed at Shell Deer Park. For example, we reviewed the open-path UV-DOAS system information from BP Whiting and found that they were able to verify a detection limit of 8 ppbv path average concentration for benzene over a 1,500-meter optical path. This is well above the 2.8 ppbv fenceline benzene concentration action level, let alone the sub-ppbv levels necessary to determine the ΔC . Moreover, this system, though commercially available, was optimized by developing alternative software to improve the detection limit (see memorandum “Meeting Minutes for April 21, 2015, Meeting Between the U.S. EPA and BP Whiting” in Docket ID No. EPA-HQ-OAR-2010-0682). Thus, the system, as installed, would not be readily available to other refineries. We reviewed data for the UV-DOAS system at the Chevron Richmond refinery and found that this system, with optical path lengths ranging from 500 to 1,000 meters, has a reported benzene detection limit of 5 ppbv averaged over the path length. Again, this is above the fenceline benzene concentration action level at the fenceline established in this final rule. In addition, we could not find any information to support the reported detection limit. We note that the public Web site operated by the City of Richmond, California indicates that information provided by the system is informational only, not quality assured, and not to be used for emergency response or health purposes.

We also disagree with the commenter's claim that if the EPA does not finalize requirements for real-time open-path monitors then, at a minimum, the EPA should require active daily monitoring. There are two methods of

active monitoring. One method, which we will refer to as the “auto-GC method,” uses a dedicated gas chromatograph at each monitoring location and can return ambient air concentration results multiple times a day or even hourly. The other method, which we refer to as “method 2,” uses an active pump to collect gas in a sorbent tube or in an evacuated canister over a 1-day period, for later analysis at a central location. While active sampling monitoring networks are capable of measuring multiple pollutants and would likely be able to detect benzene at sub-ppbv levels as necessary to demonstrate compliance with the fenceline requirements in this final rule, they consist of discreet monitors and would not provide any better spatial coverage of the refinery fenceline than a passive diffusive tube monitoring network. Further, as shown in Table 9 of the proposed rule (see 79 FR 36923, June 30, 2014), like open-path systems, an active sampling monitoring network would cost many times that of a passive diffusive tube monitoring network. At proposal, we estimated the costs of active daily sampling based on “method 2” to be approximately 10 times higher than for the proposed passive monitoring (see memorandum “Fenceline Monitoring Technical Support Document”, Docket ID No. EPA-HQ-OAR-2010-0682-0210). We note that this type of active daily sampling based on method 2 does not necessarily yield results within 24 hours as the sample analysis would be conducted separately. We did not specifically estimate the costs of an auto-GC alternative, but the capital costs would be at least 20 to 30 times that for the passive diffusive tube system, would require shelters and power supplies at all monitoring locations and would have operating costs similar to the “method 2” active monitoring option we considered.

To date, there are no commercially-available, real-time open-path monitors capable of detecting benzene at the sub-ppbv levels necessary to demonstrate compliance with the fenceline requirements in this final rule. Only a system that can detect such levels will result in effective action by facilities to identify and control fugitive emissions in excess of those contemplated by the MACT standards. Further, active monitoring systems, while potentially capable of detecting benzene at sub-ppbv levels, like open-path systems, become very costly when enough monitors are located around the facility to approach the spatial coverage of the passive diffusive tubes. However, we

believe that the state of technology is advancing and that the capabilities of these systems will continue to improve and that the costs will likely decrease. If a refinery owner or operator can demonstrate that a particular technology would be able to comply with the fenceline standards, the owner or operator can request the use of an alternative test method under the provisions of 40 CFR 63.7(f). A discussion of the specific requirements for these requests can be found in the first comment and response summary of Chapter 8.3 of the “Response to Comment” document.

Comment: One commenter stated that the required monitoring should include real-time monitoring of all chemicals released by refineries that pose risks to human health. The commenter stated that the limited scope of monitoring required by the proposed rule appears to be guided by the EPA’s judgment that fugitive, or “unintended” emissions pose the greatest threat to public health. On the contrary, communities may well suffer from the effects of chemicals released into the air under normal, permitted emissions. A more expansive monitoring strategy would account for both routine and fugitive emissions.

Several commenters noted that monitoring is limited to benzene as opposed to multiple HAP. One commenter noted that ill health experienced by refinery neighbors is due in large part to the synergistic effects of multiple chemicals. Therefore, the commenter stated that it is essential that the rule require monitoring of the full range of chemicals with health implications. Other commenters recommended that the fenceline monitoring requirement be amended to include additional contaminants, such as VOC, that may negatively impact human health and the environment. Conversely, other commenters stated that the EPA has appropriately selected benzene as a target analyte and surrogate for HAP emissions from petroleum refineries, as benzene is a common constituent in refinery feedstocks and numerous refinery streams, and is present in most HAP-containing streams in a refinery.

Response: As part of the CAA section 112(d)(6) technology review, the EPA identified the fenceline monitoring standard as a development in practices, processes or control technologies that could improve management of fugitive HAP emissions. Thus, to the extent the commenter is suggesting that the EPA require the fenceline monitoring system to monitor for emissions of non-HAP pollutants, such request goes beyond the scope of our action. Furthermore, to the

extent that the commenter is raising health concerns, although we address residual risk remaining after implementation of the MACT standards under CAA section 112(f)(2), we note that the MACT standards themselves, including this requirement, are aimed at protecting public health, especially in surrounding communities. As we explained in the proposal, and as we determine for this final rule, the MACT standards as modified by additional requirements for storage vessels, provide an ample margin of safety to protect public health. We did not propose and are not finalizing a fenceline monitoring requirement as necessary to provide an ample margin of safety under CAA section 112(f)(2).

Petroleum refining emissions can contain hundreds of different compounds, including many different HAP, and no single method can detect every HAP potentially emitted from refineries. While several HAP are amenable to quantification via passive diffusive tube monitoring using the same adsorbent tubes used for benzene (e.g., toluene, xylenes and ethyl benzene, which have uptake rates in Table 12.1 in Method 325B), we selected benzene as a surrogate because it is present in nearly all refinery fugitive emissions. By selecting a single HAP as a surrogate for all fugitive HAP, we are able to establish a clear action level, which simplifies the determination of compliance for refinery owners or operators and simplifies the ability of regulators and the public to determine whether sources are complying with the work practice standard. As described in the proposal preamble, benzene is ubiquitous at refineries and present in nearly all refinery process streams, including crude oil, gasoline and wastewater. Additionally, benzene is primarily emitted from ground level, fugitive sources that are the focus of the work practice standard. Thus, we conclude that monitoring of benzene is appropriate and sufficient to identify emission events for which the monitoring program is targeting. Consequently, we are not requiring quantification of other pollutants although refinery owners or operators could choose to analyze the diffusive tube samples for additional HAP in conducting root cause analysis and corrective action.

iii. Fenceline Monitoring Action Level

Comment: Several commenters stated that the action level for fenceline monitoring (i.e., 9 µg/m³ or 2.8 ppbv), was set too high. Some of these commenters noted that the EPA selected 9 µg/m³ as the highest modeled benzene

concentration at any refinery fenceline. One commenter stated that this was arbitrary and capricious and stated the action threshold level makes little sense because only 2 of the 142 modeled facilities are expected to have fenceline concentrations above 4 $\mu\text{g}/\text{m}^3$. Several commenters noted that the average modeled benzene concentration is 0.8 $\mu\text{g}/\text{m}^3$, which is more than an order of magnitude less than the proposed fenceline benzene concentration action level.

Two commenters argued for a lower action level threshold, citing the proposed California OEHHA rule, which finalized new and revised benzene reference exposure levels (REL) that are more stringent than the ones the EPA used in the residual risk assessment supporting the proposed rule.

Two commenters stated that while the fenceline benzene concentration action level of 9 $\mu\text{g}/\text{m}^3$ is relatively protective compared to standards adopted by many states, including Louisiana and Texas, it is still 80-percent higher than the European Union's standard of 5 $\mu\text{g}/\text{m}^3$. The commenter urged the agency to consider adopting a stricter standard comparable to what other industrialized nations use.

Several commenters stated that the EPA's 9 $\mu\text{g}/\text{m}^3$ action level is inconsistent with the statutory text and objectives of CAA sections 112(d) and (f), which direct the EPA to focus on the best-performing, lowest-emitting sources, in order to require the "maximum achievable" emission reductions. The commenters stated that the EPA promulgated the 9 $\mu\text{g}/\text{m}^3$ limit without properly following the statutory requirements for establishing MACT floor limits, pointing out that the EPA made no determination of whether or not these general models were representative of the emissions levels actually achieved by the submitting refinery, and no connection was drawn between the best performing sources and the eventual 9 $\mu\text{g}/\text{m}^3$ limit.

On the other hand, several commenters opposed the 9 $\mu\text{g}/\text{m}^3$ action level suggesting that it was not achievable and that it is arbitrary. Some commenters noted that emission/dispersion models are always very site-specific and do not necessarily yield a result that is reliable or reproducible. Several commenters stated that additional studies are necessary to allow the agency to account for these variables and set a more appropriate concentration corrective action level. Commenters suggested a 2-year data gathering effort at all refineries and data evaluation before determining a specific threshold to use.

Several commenters recommended action levels ranging from 15 $\mu\text{g}/\text{m}^3$ to 20 $\mu\text{g}/\text{m}^3$ of benzene to account for the variability expected in monitoring data. The commenters stated that modeling biases have underestimated the necessary action level to achieve the stated goals of the program.

Response: First, it is important to note that the purpose of the standard has not changed between proposal and promulgation, namely that it is a technology-based standard that is an advancement in practices to manage fugitive emissions. It is not intended to be a separate or new MACT standard promulgated pursuant to CAA sections 112(d)(2) and (3) for which a "floor" analysis would be required.⁷ Nor is it a standard that we are promulgating pursuant to CAA section 112(f)(2) as necessary to provide an ample margin of safety to protect public health or prevent an adverse environmental effect.⁸ Thus, claims that a standard should reflect European Union health-based standards or the California OEHHA rule are misplaced. We also disagree with the suggestion that the proposed monitoring requirement will allow for higher emissions. As noted elsewhere, we are retaining all of the source-specific requirements for fugitive emissions sources that exist in Refinery MACT 1.

We disagree with the commenters that suggest that the proposed action level of 9 $\mu\text{g}/\text{m}^3$ is too low and may not be achievable even for well-performing facilities. As discussed in the preamble for the proposed rule, we selected the 9 $\mu\text{g}/\text{m}^3$ benzene action level because it is the highest value on the fenceline predicted by the dispersion modeling and, thus, is a level that we estimate that no refinery should exceed when in full compliance with the MACT standards, as amended by this final rule. All of the results of our pilot study, the API study, and the other ambient monitoring data near refineries clearly indicate that this level is achievable. Furthermore, we expect the fenceline concentration difference measured following the procedures in the final

rule to be indicative of refinery source contributions and we have provided procedures to isolate these concentrations from outside sources, as well as background.

We expect that the fenceline monitoring standard will result in improved fugitive HAP emissions management as it will alert the refinery owners or operators of fugitive sources releasing high levels of HAPs, such as large leaks, faulty tank seals, etc.

iv. Fenceline Monitoring Root Cause Analysis and Corrective Action Provisions

Comment: A number of commenters objected to the proposal's "open-ended" provisions allowing the EPA to direct refinery owners or operators to change their operations in order to achieve the fenceline limit, with no regulatory limits on costs and without consideration of the impact to safe operations or operability of the plant. Another commenter stated that the EPA must properly assess the costs associated with the root cause analysis/corrective action requirements and should establish a cost effectiveness threshold for any required root cause analysis/corrective action to ensure that limited resources are effectively and efficiently applied for the control of emissions.

One commenter stated the proposed fenceline benzene concentration action level is effectively an ambient air standard, because corrective action to achieve that level is required and that if a facility's initial corrective action is unsuccessful, the rule provides that further action is required and the EPA must approve that further corrective action plan. Thus, the commenter argued, the EPA would essentially be able to dictate corrective actions, with no bounds on what could be required and no consideration of whether any cost-effective actions are available to assure the action level is met. The commenter continued that such a requirement converts a work practice program to an emission limitation and such ambient air limits are not authorized by CAA section 112. Several commenters noted that LDAR and current work practice programs have no similar requirement for the EPA approval, and the commenters suggested that the requirement for the EPA approval of any second corrective action should not be included in 40 CFR 63.658(h).

Another commenter recommended that, if after corrective action, a facility still has an exceedance for the next sampling episode, *then* the facility should be required to do more than it

⁷ To the extent that the commenters are suggesting that EPA must re-perform the MACT floor analysis for purposes of setting a standard pursuant to section 112(d)(6), we note that the D.C. Circuit has rejected this argument numerous times, most recently in *National Association for Surface Finishing et al. v. EPA No. 12-1459* in the U.S. Court of Appeals for the District of Columbia.

⁸ Although we did not establish this limit to address residual risk under CAA section 112(f)(2), the limit was derived from the same inventory used for our risk modelling. Thus, based on our current reference concentration for benzene, the 9 $\mu\text{g}/\text{m}^3$ action level will also ensure that people living near the refinery will not be exposed to cancer risks exceeding 100-in-1 million.

did after the first root cause analysis, as the prior corrective action clearly did not correct the problem. The commenter stated that one corrective action measure the EPA should include in all such instances is higher-quality monitoring such as UV-DOAS for at least 1 year to monitor, identify, correct and assure ongoing compliance after the exceedance problem is fixed.

Response: The “on-going” requirement to achieve the fenceline benzene concentration action level is no different in concept from the LDAR requirements for equipment or heat exchange systems in the Refinery MACT 1 rule, which requires the refinery owner or operator to repair the source of the emissions regardless of what it takes until compliance with the standard is achieved.

We disagree with the claim that the EPA must assess the costs associated with the root cause analysis/corrective action requirements and establish a cost effectiveness threshold for any required root cause analysis/corrective action to ensure that limited resources are effectively and efficiently applied for the control of emissions. We did not attempt to project the costs of the root cause analysis/corrective action for at least two reasons. First, based on the dispersion modeling of the benzene emissions reported in response to the inventory section of the 2011 ICR, we project that no refinery should exceed that fenceline benzene concentration action level if in full compliance with the MACT standards, as amended by this action. Thus, assuming compliance with the MACT standards, we would expect that there are no costs for root cause analysis/corrective action. To the extent that there are exceedances of the action level, the premise of the fenceline monitoring is to provide the refinery owners or operators with the flexibility to identify the most efficient approaches to reduce the emissions that are impacting the fenceline level. Since the choice of control is a very site-specific decision, we would have no way to know how to estimate the costs. Thus, the source is in the best position to ensure that resources are effectively and efficiently spent to address any exceedance.

We intended the proposed requirement for refinery owners or operators to submit a corrective action plan for the EPA approval to provide the Administrator with information that they were making a good-faith effort to reduce emissions below the fenceline benzene concentration action level, as expeditiously as practicable. However, we understand the importance for refinery owners or operators to begin

corrective action as soon as possible, without having to wait for the EPA approval. Therefore, we are finalizing the requirement for refinery owners or operators to submit such plans but we are not finalizing the requirement that the EPA must approve the plan prior to the corrective action being taken.

We previously responded to comments regarding UV-DOAS or other open-path monitoring systems in this section, explaining that the current detection limits for these systems exceeds the action level threshold and, thus, these systems would not provide usable data to inform corrective action. Thus, we disagree that the EPA should require these systems for all facilities whose first attempt at corrective action is ineffective.

v. Fenceline Monitor Siting Requirements

Comment: Numerous commenters provided suggestions on, or requested clarification of, the monitor siting requirements. Several commenters stated that proposed Method 325A uses the terms “fenceline or property boundary,” while it should consistently use the term “property boundary” or even “property line” as the fenceline location. Several commenters stated that Sections 8.2.2.1.4 and 8.2.2.3 of Draft Method 325A specify that samplers be placed just beyond the intersection where the measured angle intersects the property boundary and this could require placing monitors on other people’s property, in a road, in a water body or in a railroad right-of-way. The commenters suggested that facilities should be allowed to place monitors at any vector location that meets other requirements between the property boundary and the source nearest the property boundary. They stated that facilities need this clarification to avoid obstructions (e.g., buildings or trees) that may be at the property line.

Numerous commenters requested that the rule clarify where monitors need to be placed in special circumstance, such as refineries bisected by a road, railroad or other public right-of-way or a boundary next to a navigable waterway. Several commenters stated that refiners should not need to place monitors on these property boundaries or other property boundaries where there are no residences within 500 feet of the property line. Commenters also asked if areas that had non-refinery operations, but are still inside the property boundary, would be included for purposes of determining where to site monitors.

A few commenters expressed concern about the approach for determining the

number of required monitors at a site based on the acreage, noting that it is unfair to small facilities and will leave gaps in monitoring coverage for very large facilities. Some commenters recommended amending the proposed rule to require the placement of fenceline monitors at fixed distances along facilities’ perimeters with no maximum number of monitors. Some commenters stated that the rule should specify an acceptable range on the 2,000-foot spacing requirement or the radial placement requirement as it may be necessary to address accessibility or safety concerns. Several commenters suggested that a lower minimum number of sampling monitors should be required for very small refineries or small “subareas.” These commenters noted that refineries often include disconnected parcels that can be very small (e.g., 10 acres or less). If each disconnected parcel must be treated as a separate subarea, then both sampler siting options in Draft Method 325A would result in unnecessarily large numbers of samplers extremely close together. Some commenters recommended that Method 325A specify that samplers need not be placed closer than 500 feet (versus the normal 2,000-foot interval specified in Option 2) along the fenceline from an adjoining sampler, regardless of whether the radial or linear approach is used and should waive the minimum number of samplers specified in Sections 8.2.2.1.1, 8.2.2.2.1, and 8.2.3.1. Another commenter added that the rule should waive the requirement for additional samplers in Sections 8.2.2.1.5 and 8.2.3.5 if the 500-foot minimum spacing criterion is compromised.

Response: We agree that the Method 325A should provide clear and consistent language. We have revised the language to be consistent in referring to the “property boundary”. We have also revised the Method to allow placement of monitors at any radial distance along either a vector location or linear location (that meets the other placement requirements) between the property boundary and the source nearest the property boundary. That is, the monitors do not need to be placed exactly on the property boundary or outside of the property boundary. They may be placed within the property closer to the center of the plant as long as the monitor is still external to all potential emission sources. We do note that if the monitors are placed farther in from the property boundary, the owner or operator should take care to ensure, if possible, that the radial distance from the sources to the monitors is at least 50

meters. If the perimeter line of the actual placement of the fenceline monitors is closer than 50 meters to one or more sources, then the additional monitor citing requirements will apply. We have revised subparagraphs of Section 8.2.2 to provide this allowance. This clarification should address issues related to obstructions such as tall walls located at the facility boundary.

We intended that the fenceline monitoring would create a monitoring perimeter capable of detecting emissions from all fugitive emission sources at the refinery facility. We have long established that a road or other right of way that bisects a plant site does not make the plant site two separate facilities, and, thus, would not be considered part of the property boundary. As we agree that monitors need only be placed around the property boundary of the facility, it would not be necessary to place monitors along a road or other right-of-way that bisects a facility. We have clarified this in the final rule and Method 325A.

If the facility is bounded by a waterway on one or more sides, then the shoreline is the facility boundary and monitors should be placed along this boundary. If the waterway bisects the facility, the waterway would be considered internal to the facility and monitors would only be needed at the facility perimeter.

Regarding the comment that monitors should not be required where there is no residence within 500 feet of the property line, we disagree. We proposed and are finalizing the fenceline monitoring standards under CAA section 112(d)(6) as a means to improve fugitive HAP emissions management, regardless of whether there are people living near a given boundary of the facility.

Regarding the clarification requested about monitor placement considering non-refinery operations, the property boundary monitors should be placed outside of all sources at the refinery. This is because moving the monitoring line inward to exclude the non-refinery source could lead to an underestimation of the ΔC compared to the monitoring external of the entire site. If the non-refinery source is suspected of contributing significantly to the maximum concentration measured at the fenceline, a site-specific monitoring plan and monitoring location specific near-field interfering source (NFS) corrections will be needed to address this situation.

Section 8.2.3 of Method 325A includes language to provide some flexibility when using the linear

placement ($\pm 10\%$ or ± 250 feet). We consider it reasonable to provide similar placement allowance criteria for the radial placement option (± 1 degree). We are not providing requirements that would allow small area refineries to use fewer than 12 monitoring sites. We do not consider that any refinery would be so small as to warrant fewer than 12 monitors; however, we did not necessarily consider very small subareas for irregularly shaped facilities or segregated operations. When considering these subareas, we agree that fewer than 12 monitoring sites should be appropriate. Therefore, we have provided that monitors do not need to be placed closer than 152 meters (500 feet) (or 76 meters (250 feet) if known sources are within 50 meters (162 feet) of the monitoring perimeter, which is likely for these subareas or segregated areas) with a stipulation that a minimum of 3 monitoring locations be used per subarea or segregated area. We note, however, that this distance provision does not obviate the near source extra monitoring siting requirements or the requirement to have a minimum of three monitors per subarea or segregated area.

If facility owners or operators have questions regarding the required locations of monitors for a specific application, they should contact the EPA (or designated authority) to resolve questions about acceptable monitoring placement.

vi. Compliance Time for Fenceline Monitoring Requirements

Comment: Some commenters supported EPA's proposal to provide 3 years to put a fenceline monitoring program in place, but the commenters believe that timing is unclear in the proposed regulatory language, which appears in Table 11 to subpart CC, and requested that the EPA add the initial compliance date to 40 CFR 63.658(a). One commenter stated that instituting this program for all 142 major source U.S. refineries would require considerable time. Based on their experience with their pilot study, one commenter noted that commercially available weather guards meeting the specifications of proposed Method 325A are not available and would need to be fabricated. Additionally, a commenter stated that only a limited number of laboratories in the U.S. are able to perform the necessary analyses. According to the commenter, considerable time and effort will be needed to qualify additional laboratories and to expand the capacity of existing laboratories to handle the samples from 142 refineries.

Other commenters disagreed with the EPA's proposed compliance time and suggested that the EPA shorten the timeline for implementation at refineries so that possible corrective action occurs much sooner than proposed. The commenters suggested that deployment of passive samplers can proceed more promptly than proposed, especially since the EPA has simultaneously proposed specific "monitor siting and sample collection requirements as EPA method 325A of 40 CFR part 63, Appendix A, and specific methods analyzing the sorbent tube samples as EPA Method 325B of 40 CFR part 63, Appendix A." Moreover, the commenter noted, a principal reason that the EPA selected passive monitors over active monitors was due to the relative "ease of deployment." The commenter claimed this ease of deployment rationale is undermined by a 3-year grace period to deploy passive monitors when the EPA is providing very specific criteria for their use. The commenter suggested that the EPA require full compliance with the passive monitoring requirement within 1 year of the effective date of the rule.

Response: While we realize that it will take some time for the refinery owners or operators to understand the final rule and develop a compliant monitoring program, we agree that in requiring the passive sampler monitoring system, we recognized the ease of implementation and deployment. Although industry commenters identified issues they faced in the API pilot study while trying to implement the monitoring method, we note that the 12 facilities that participated in the API pilot study installed the fenceline monitors and began sampling in late 2013 with relative ease and within months of obtaining the draft methods. Thus, we disagree with the suggestion that 3 years is insufficient and agree with other commenters that 3 years is in fact too long. However, we also are aware that the API pilot facilities used the direct ΔC approach proposed and did not attempt to develop site-specific monitoring programs to correct for interfering near-field sources. Although we expect that facilities could complete direct implementation of the proposed fenceline monitoring requirement within 1 year after the effective date of the rule, as suggested by some commenters, facilities that choose to develop a site-specific monitoring plan would need a longer period of time. Therefore, we are finalizing requirements that specify that facilities must begin monitoring for the official

determination of ΔC values no later than 2 years after the effective date of the rule.

vii. Fenceline Monitoring
Recordkeeping and Reporting
Requirements

Comment: Some commenters suggested that facilities should be required to submit the monitoring data via the ERT only if they exceed the fenceline benzene concentration action level and that all remaining data should be kept on-site and available for inspection or upon request of the EPA, citing that this is consistent with EPA's semiannual NESHAP reporting of only exceptions (*i.e.*, deviations). Other commenters requested that the EPA only post the rolling annual average concentration values and not the 2-week monitoring data. These commenters indicated concern that if errors are present in the raw data that are submitted semiannually to the EPA, the data, errors and all, will be released to the public and correcting them will not take place or will not take place in a timely manner. One commenter added that there is very little useful information that can be gleaned from the raw data and posting it simply invites misunderstandings.

Commenters also stated that the EPA should adopt reporting requirements to ensure that facilities report the monitoring data appropriately. Specifically, commenters recommended that 40 CFR 63.655(h)(8)(i) should be clarified to only require reporting of valid data and cautioned that data should be processed to allow accurate calculations of annual averages to be used for reporting and evaluation. To accomplish this, commenters recommended that the rule provide 75 days from the end of a 6-month sampling period to report to the EPA, rather than the proposed 45-day period, in order to provide adequate time to obtain quality-assured results for all 2-week sampling periods.

One commenter applauded the proposal's requirements for electronic reporting of the fenceline concentration data and making the resulting information publicly available. However, the commenter recommended that the EPA consider a more truncated data reporting period that is more consistent with the associated milestones of collecting a 14-day sampling episode. As is, the commenter claimed, the proposed rule would have a lag time of up to 7.5 months between data collection and posting. The commenter indicated that data reporting on a more frequent schedule will not only provide transparency, but will

provide states and local agencies with information about air quality at refineries at a frequency that could allow informed activities to address leaks much more quickly and protect public health.

Response: We disagree with the commenters who suggest that facilities only report the rolling annual average or only exceedances of the fenceline benzene concentration action level because the commenters believe there is little information to be gleaned from the raw data. Monitoring data are useful in understanding emissions, testing programs, and in determining and ensuring compliance. We generally require reporting of all test data, not just values calculated from test data and/or where a facility exceeds an emissions or operating limit. For example, when we conduct risk and technology reviews for source categories, we are adding requirements for facilities to submit performance test data into the ERT, not just performance test data that indicates an exceedance of an applicable requirement. In the Mercury and Air Toxics Rule, we require facilities to report direct measurements made with CEMS, such as gas concentrations, and we require hourly reporting of all measured and calculated emissions values (see discussion at 77 FR 9374, February 16, 2012). In particular, for the fenceline monitoring requirements in this final rule, we offer facilities options for delineating background benzene emissions and benzene emissions not attributable to the refinery, and we offer options for reduced monitoring, making it even more necessary that we have all of the data to review to ensure that testing and analyses are being done correctly and in compliance with the requirements set out in the regulations, and that root cause analyses and corrective actions are being performed where necessary. Therefore, as proposed, we are finalizing the requirements that facilities report the individual 2-week sampling period results for each monitor, in addition to the calculated ΔC values in their quarterly reporting.

Regarding commenters' concerns that facilities post accurate data and have sufficient time to perform quality assurance on the data, in the final rule, we have established provisions for how sources are to address outliers and data corrections. Additionally, as proposed, we do not require an initial report until facilities have collected 1 year of data so that facilities do not report the data until a rolling annual average value can be determined. This will allow refinery staff and analytical laboratories to iron out any issues that might arise as they

implement these methods for the first time. Once this initial data collection period is complete, we anticipate that data quality issues should be infrequent. Therefore, we are providing a 45-day period following each quarterly period before facilities must submit the monitoring results, which should provide facilities adequate time to correct any data errors prior to reporting the data.

Regarding comments that suggest reporting each 2-week sample result soon after its collection, we disagree. This frequency would put undue burden on the refinery owners or operators in trying to collect, review and quality assure the data prior to reporting. However, we agree with commenters that more frequent reporting of the fenceline monitoring data would be useful. Therefore, we have revised the reporting frequency for the fenceline monitoring data to be quarterly in the final rule rather than semiannually as proposed. Additionally, we understand that there is a lot of interest in how these data will be presented to the public, and we plan to reach out to all stakeholders on appropriate approaches for presenting this information in ways that are helpful and informative.

b. Refinery MACT 2

This section provides comment and responses for the key comments received regarding the technology review amendments proposed for Refinery MACT 2. Comment summaries and the EPA's responses for additional issues raised regarding the proposed requirements resulting from our technology review are in the "Response to Comment" document in the public docket (Docket ID No. EPA-HQ-OAR-2010-0682).

i. FCCU

We received comments on the consideration of developments in pollution controls, the averaging time for FCCU PM limits, and the FCCU opacity limit, as discussed below.

Comment: One commenter stated that the EPA failed to consider developments in pollution controls for HAP from FCCUs for two reasons. First, the commenter contended that cost is not a valid consideration to evaluate if a "development" in pollution control is necessary pursuant to section 7412(d)(2), (3), (6), unless the EPA is setting a "beyond-the-floor" requirement.

Second, the commenter claimed that the EPA's review of developments is nearly 10 years old and misses some important pollution control

improvements in the industry. For example, the commenter noted that Valero Benicia installed a combination of controls in 2012 including a scrubber, SCR and CO Boiler that combine exhaust streams from the FCCU and coking and reportedly eliminate HAP emissions entirely from these sources.

The commenter also asserted that EPA consent decrees impose lower effective limits on PM than the EPA considered under the technology review. The commenter identified the BP Whiting facility as subject to 0.7 lb PM/1,000 lbs coke burn-off at one FCCU and 0.9 lb PM/1,000 lbs coke burn-off at another and claimed these limits are lower than the 1.0 lb PM/1,000 lbs coke burn-off limit currently mandated by Refinery MACT 2.

Response: We disagree that we cannot consider costs when determining if it is necessary to revise an existing MACT standard based on developments in practices, processes and control technologies. The commenter suggests that we cannot consider costs because of the requirements in CAA section 112(d)(2) and (3) for establishing initial MACT standards and which do not allow for consideration of costs until the second, “beyond the floor” phase of the analysis. As discussed previously in this preamble where we respond to comments on the fence-line monitoring requirements, to the extent that the commenters are suggesting that EPA must re-perform the MACT floor analysis for purposes of setting a standard pursuant to section 112(d)(6), we note that the D.C. Circuit has rejected this argument numerous times, most recently in *National Association for Surface Finishing et al. v. EPA* No. 12–1459 in the U.S. Court of Appeals for the District of Columbia.

Regarding the claim that the EPA did not consider the types of controls at the Valero and BP facilities, we disagree. The control measures for both of those facilities are controls that existed at the time of the development of the MACT standard. Thus, we did not identify these technologies as developments in control technologies during the technology review. However, we did identify developments in processes or practices that reflect better control by the existing technology and we reviewed modified emission limits that reflect that better level of control. The commenter suggested that we failed to consider a level of zero when the Valero facility was able to achieve zero emissions through a combined SCR, boiler and scrubber. However, the commenter provided no information to support such a claim and we are skeptical that such a result could be

achieved. We note that the SCR is designed specifically to reduce NO_x emissions, and would not be capable of reducing significantly, much less eliminating completely, HAP emissions. Similarly, based on our long-standing understanding of the processes, neither a boiler nor a scrubber could achieve such a result. Regarding the level of emissions achieved at the BP Whiting facility, we note that we evaluated control systems that can meet 0.5 lb PM/1,000 lb coke burn-off, which is a lower limit than that at BP Whiting. We determined that these were cost-effective to require for new units that are installing a new control system. However, we determined that retrofitting controls designed to meet a PM limit of 1.0 lb PM/1,000 lbs coke burn-off to now meet a limit of 0.5 lb PM/1,000 lbs coke burn-off was not cost-effective when considering PM and PM_{2.5} emissions reductions. We projected the cost of the 0.5 lb PM/1,000 lbs coke burn-off limit in retrofit cases to be \$23,000 per ton PM emissions reduced. To meet a limit of 0.7 lb PM/1,000 lbs coke burn-off or 0.9 lb PM/1,000 lbs coke burn-off, as is the case for BP Whiting, the retrofit costs would be similar to this 0.5 lb PM/1,000 lb coke burn-off option, but the reductions would be even less, resulting in costs over \$23,000 per ton. As metal HAP content of FCCU PM is approximately 0.1 to 0.2-percent of the total PM, the cost of requiring this lower limit for existing FCCU is over \$10 million per ton of metal HAP reduced. Therefore, we determined that it is not necessary to revise the PM standard for existing FCCU sources.

Comment: Refinery MACT 2 requires the owner or operator to demonstrate compliance with the PM FCCU limits by complying with the operating limits established during the performance test on a daily (*i.e.*, 24-hour) average basis. Several commenters objected to the EPA’s proposal to revise this requirement to a 3-hour averaging time. Commenters restated EPA’s arguments for 3-hour averaging time as: (1) Daily average could allow FCCUs to exceed limits for short periods while still complying with the daily average, (2) consistency with NSPS subpart Ja and (3) consistency with duration of testing. The commenters stated that the EPA had not provided any data that show that the daily average could allow FCCUs to exceed limits for short periods and, therefore, the EPA is using a hypothetical compliance assurance argument to change emission limits. The commenters stated that a change in emission limits is not authorized by

CAA section 112 because the emission limitations in Refinery MACT 2 for FCCUs were established as daily averages following the floor and ample margin of safety requirements in section 112(d)(2) of the CAA.

The commenters also state that the EPA’s additional arguments for the change to a 3-hour average are irrelevant and legally deficient. The commenters stated that the combination of a numerical emission limit and an averaging period frames the stringency of a limitation and that a reduction in either of those factors results in a significant lowering of the operating limit. The commenters conclude that the EPA has proposed to change the stringency of the requirements without justification, and the CAA requires that such a change in stringency be justified pursuant to CAA section 112(d)(6) or (f)(2). The commenters stated that increasing stringency for consistency with NSPS rules is not a criterion for a CAA section 112(d)(6) action. Rather that section requires a change to be due to “developments.” The only change in technology since the 2002 promulgation of Refinery MACT 2 is the availability of PM continuous emission monitoring system (CEMS), which is unproven.

One commenter noted that changing the averaging time is a very significant modification considering that the compliance limits would apply for periods of SSM. This commenter stated that it is unlikely that existing operations can consistently be in compliance with a new 3-hour average since the current daily averaging was put in place to recognize that there will be periods of operating variability that do not represent the longer term performance of an FCCU. The commenters recommended that the EPA retain the daily averaging requirement.

Response: We disagree with the commenters’ statement that reducing the averaging time from a 24-hour basis to a 3-hour basis for demonstrating compliance with the FCCU PM emission limit, using operating limits established during the performance test, is a change to the MACT floor. The emission limit of 1.0 lb PM/1,000 lbs coke burn-off is the MACT floor, and we are not changing the PM emissions limit (or alternate Ni limits) in Table 1 to subpart UUU (except to remove the incremental PM limit that did not comport with the MACT floor emissions limitation).

However, whether or not it is a change from the MACT floor is not relevant. Pursuant to CAA section 112(d)(6), the EPA must revise MACT standards “as necessary” considering developments in practices, processes and control technologies. For this

exercise, we considered any of the following to be a “development”:

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards.
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction.
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards.
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards.
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In determining whether there are “developments,” we review, among other things, EPA regulations promulgated after adoption of the MACT, such as the NSPS we identified in this instance. We identified the enhanced monitoring requirements for these operating limits as a development in practices that will help ensure FCCU owners or operators are properly operating control devices and, thus, are meeting the PM emission limit at all times. We further determined that this enhanced monitoring was cost effective and proposed that it was necessary to revise the existing standard pursuant to CAA section 112(d)(6).

While we do not have continuous PM emissions data that show actual deviations of the PM limit, we do not need such data in order to conclude that such deviations could occur when daily averages are used. The Refinery MACT 2 (*i.e.*, subpart UUU) rule requires owners or operators to establish operating limits based on three 1-hour runs during the performance test. As a matter of simple mathematics, a source could demonstrate that it is meeting the operating limit based on a 24-hour average but could be exceeding the 1.0 lb PM/1,000 lbs coke burn-off emission limit based on a 24-hour average or for one or more individual 3-hour periods during that 24-hour average. For example, an owner or operator could operate with a power input 5-percent higher than the operating limit for 23 hours, have the ESP off (zero power) for one hour, and still comply with a 24-hour average operating limit. However,

it would be difficult for this same unit to meet the 1.0 lb PM/1,000 lbs coke burn-off emissions limit over a 24-hour period, and it certainly would not meet the limit for every 3-hour period during that day. As the operating limit can be established to correspond with 1.0 lb PM/1,000 lbs coke burn-off, the 5-percent higher power input would likely correspond with a 0.95 lb PM/1,000 lbs coke burn-off emissions rate (5-percent lower). Uncontrolled emissions are typically 6 to 8 lbs/1,000 lbs coke burn-off. Thus, this unit would have emissions averaging approximately 1.2 lbs PM/1,000 lbs coke burn-off during this 24-hour period [*i.e.*, $(0.95 \times 23 + 7) / 24$], but would be in compliance with the 24-hour average operating limit. The unit would obviously also be out of compliance with the 3-hour average over the period when the power was turned off. We also have concerns that the operating limits are not always linear with the emissions, so that the longer averaging times do not effectively ensure compliance with the PM emissions limit. Therefore, as proposed, we are finalizing the requirement for owners or operators to comply with the operating limits on a 3-hour basis, rather than the 24-hour basis currently in the rule.

Comment: The technology review for FCCUs resulted in the EPA proposing to remove the 30-percent opacity alternative limit for demonstrating compliance with the PM emissions limit that is available for refineries complying with the Refinery NSPS 40 CFR part 63, subpart J. Two commenters supported the EPA’s proposed removal of the 30-percent opacity limit for FCCUs. Other commenters stated that current technology is good enough for a 10- or 20-percent opacity limit. On the other hand, several commenters stated that the proposed removal of the 30-percent opacity limit must meet the criteria specified in CAA section 112(d)(6) and (f)(2), which requires analysis of the statutory basis, environmental impacts, costs, operational and compliance feasibility and impacts, that the EPA has not conducted. The commenters claimed that had the EPA conducted a proper analysis, the EPA would have determined that the proposed change to remove the 30-percent opacity limit is not necessary or supportable. Additionally, these commenters stated that since the underlying PM emissions limit is unchanged, there is no emission reduction justification for this proposed change, and the change would not meet the CAA section 112(d)(6) requirement of being cost effective. The commenters also noted that processes or practices for

existing FCCUs have not changed, as required for a CAA section 112(d)(6) revision.

Several commenters urged the EPA to maintain the 30-percent opacity limit for these FCCUs. As a practicable and cost-effective alternative to address the EPA’s concern as to whether compliance with a 30-percent opacity limit ensures compliance with the PM emissions limit, commenters suggested annual performance tests to confirm that the FCCU is meeting the PM emissions limit, rather than performance tests every 5 years, as proposed.

One commenter stated that the EPA never intended for the opacity limit in Refinery NSPS subpart J to be used to demonstrate compliance with the PM emissions limit, but instead to assure the PM controls operate properly. The commenter stated that the EPA’s conclusion that the 30-percent opacity limit may not be sufficiently stringent to ensure compliance with the underlying PM emissions limit is based on a false premise as to the purpose of the opacity standard because as the EPA states, “Opacity of emissions is indicative of whether control equipment is properly maintained and operated.”

Several commenters stated that the proposed elimination of the 30-percent opacity limit currently in Refinery MACT 2 leaves existing FCCUs that use cyclones with no viable alternative approach to demonstrate compliance with the PM emissions limit without adding or replacing controls. They stated the other approaches for demonstrating compliance with the PM emissions limit in Refinery MACT 2 (such as development of a site-specific opacity limit) do not work for them. The commenters stated that although they believe that more frequent performance tests would show that the FCCUs are in fact meeting the PM emissions limit, the absence of the 30-percent opacity limit would force FCCUs using cyclones for PM control to install additional, costly PM controls (*e.g.*, ESPs or wet gas scrubbers). They projected that these additional controls would cost tens of millions of dollars per FCCU and would require at least 3 years of compliance time. Additionally, one commenter stated that even FCCUs with additional downstream PM controls would not be able to achieve a site-specific limit at all times and needed the availability of the alternative 30-percent opacity limit. One commenter estimated that installing an ESP to meet the proposed 10-percent opacity limit would cost approximately \$121,000/ton, assuming a 32 tpy PM emission reduction. The commenter noted that the ESP would also increase GHG emissions and require more energy

resources from the facility. The commenter concluded that installing an ESP is neither cost effective nor appropriate considering non-air quality environmental and health impacts and energy requirements, and recommended that the EPA maintain the current NSPS subpart J alternative limits and add additional alternative limits into Refinery MACT 2 only as optional limits for demonstrating compliance with the PM emissions limit.

Response: In promulgating Refinery MACT 2, the EPA identified the 1.0 lb PM/1,000 lbs coke burn-off limit as the MACT floor but allowed a compliance option for FCCUs subject to Refinery NSPS subpart J to comply with an opacity limit up to 30 percent with one 6-minute allowance to exceed the 30-percent opacity in any 1-hour period. As stated in the proposal, compliance studies have shown that the 30-percent opacity limit does not correlate well with the 1.0 lb PM/1,000 lbs coke burn-off limit, and that an FCCU can comply with the 30-percent opacity limit while its emissions exceed the PM emissions limit.⁹ Regardless of whether the 30-percent opacity limit in Refinery NSPS subpart J was designed to “ensure that the control device was operated properly,” Refinery MACT 2 allows sources subject to NSPS subpart J to use the 30-percent opacity limit to demonstrate continuous compliance with the PM emissions limit. We have determined that the 30-percent opacity limit is inadequate for the purpose of demonstrating continuous compliance with the PM emissions limits in Refinery MACT 2. As such, we proposed to remove this opacity limit and require the owner or operator to either demonstrate compliance with the PM emissions limit by continuously monitoring the control device parameters established during the performance test or establish and monitor a site-specific opacity limit. For clarity, we note that we proposed to allow a site-specific opacity limit, not a 10-percent opacity limit as some commenters suggest. The site-specific opacity limit can be significantly higher than 10 percent, but it cannot be lower than 10 percent.

While the compliance study indicates that a 30-percent opacity limit does not correlate well with a 1.0 lb PM/1,000 lbs coke burn-off emissions limit, further review of this same study indicates that a 20-percent opacity limit provides a reasonable correlation with units

meeting the 1.0 lb PM/1,000 lbs coke burn-off emissions limit. We also reviewed the data submitted by the commenters regarding PM emissions and opacity correlation. While the data suggest that there is variability and uncertainty in the PM/opacity correlation, the data do not support that a 30-percent opacity limit would ensure compliance even when considering the uncertainty associated with the PM/opacity correlation. Based on the variability of the 3-run average opacity limits, we determined that, if the 3-hour average opacity exceeded 20-percent, then it was highly likely (98 to 99-percent confidence) that the FCCU emissions from the unit tested would exceed the PM emissions limit.

After considering the public comments, reviewing the data submitted with those comments, and further review of the compliance study, in this final rule we are adding a 20-percent opacity limit, evaluated on a 3-hour average basis for units subject to NSPS subpart J. As we noted above, a 20-percent opacity limit provides a reasonable correlation with the PM emissions limit, and an exceedance of this 20-percent opacity limit will provide evidence that the PM emissions limit is exceeded. However, it is possible that units could still exceed the PM emissions limit while complying with the 20-percent opacity limit, if those units operate close to the 1 lb PM/1,000 lbs coke burn-off emissions limit. To address this concern, we considered the commenters’ suggestion to require a performance test annually rather than once every 5 years. Some commenters suggested that this option specifically apply to FCCUs with cyclones, but this option is applicable to any control system operating very near the PM emissions limit and using an opacity limit to demonstrate continuous compliance. We have determined that the Refinery NSPS subpart J compliance procedures in Refinery MACT 2, in combination with a 20-percent opacity limit demonstrated on a 3-hour average basis and with annual performance tests when a test indicates PM emissions are greater than 80-percent of the limit (*i.e.*, 0.80 lb PM/1,000 lbs coke burn-off), will ensure continuous compliance with the PM emissions limit. FCCUs with measured PM emissions during the performance test at or below 0.80 lb PM/1000 lbs of coke burn-off will remain subject to the requirement to conduct performance tests once every 5 years, consistent with the requirements we proposed.

We do not agree with commenters that the proposed opacity revision would add significant cost or

compliance burden. The control device-specific monitoring parameters that were proposed rely on parameters commonly used to control the operation of the control device, so the monitoring systems should be already available. Further, since we are merely changing the opacity limit, we expect these units will already have opacity monitoring systems needed to demonstrate compliance with the PM emissions limit and would not incur costs for new equipment.

Comment: Several commenters stated that they agree with the EPA’s determination in the proposal that the current CO limits provide adequate control of HCN. Two commenters stated that there are limited HCN emissions data and that more data are needed before the Agency can appropriately determine whether an HCN standard is necessary and justified. One commenter noted that the process undertaken by the EPA to estimate HCN emissions was flawed, and likely overestimates HCN emissions significantly. Another commenter stated that they performed HCN stack testing at three refineries and subsequent modeling at two refineries and concluded that the ambient HCN emissions were well below the applicable health limits.

In contrast, some commenters expressed concerns about high HCN levels. One commenter stated that the EPA should consider re-evaluating the benefit of low NO_x emissions from the FCCU, if that is indeed the cause of higher HCN emissions, because exposing people to HCN is not acceptable. The commenter also noted that the community now also has the increased dangers of storing and transporting aqueous ammonia, which is used in some cases to achieve low NO_x emissions from the FCCU.

One commenter stated that the EPA must set stronger HCN standards on FCCU emissions because of the high release amounts reported, the fact that non-cancer risk is driven by emissions of HCN from FCCU, and the fact that the EPA has never set standards for HCN emissions. The commenter provided a report that they believe shows that the EPA has not shown that CO is a reasonable or lawful surrogate to control HCN and has not shown that the conditions necessary for a surrogate are met with regard to CO and HCN, which is an inorganic nonmetallic HAP. Further, the report indicates that SCR is a reasonable and cost effective method for controlling HCN and that the EPA failed to review and consider other viable methods to control HCN and must do so to satisfy its legal obligations in this rulemaking.

⁹ Compliance Investigations and Enforcement of Existing Air Emission Regulations at Region 5 Petroleum Refineries. U.S. Environmental Protection Agency, Region 5—Air and Radiation, Chicago, Illinois. March 9, 1998.

Response: At the time we promulgated the MACT, we determined that the control strategy used by the best performing facilities to reduce organic HAP emissions was the use of complete combustion, which occurs when the CO concentration is reduced to 500 ppmv (see the proposal for Refinery MACT 2 at 63 FR 48899, September 11, 1998). We rejected arguments that some facilities operate at CO levels well below 500 ppmv and, thus, the MACT floor should be set at a lower CO concentration because once CO concentrations reached 500 ppmv, there was no longer a correlation between reduced CO concentrations and reduced HAP concentrations. And, in fact, emissions of certain HAP, such as formaldehyde, tended to increase as CO concentrations were reduced below 500 ppmv.¹⁰

In the current rulemaking action, we determined at the time of the proposed rule that this also holds true for HCN emissions. That is, once CO emissions are reduced to below 500 ppmv (*i.e.*, complete combustion is achieved), we no longer see a direct correlation between CO concentrations and HCN emissions.

All of the HCN emissions data we have were reported from units operating at or below the 500 ppmv CO limit (*i.e.*, in the complete combustion range), so it is not surprising that there is not a strong correlation between CO and HCN from the FCCU ICR source test data. However, catalyst vendor data and combustion kinetic theory support the fact that, in the partial burn mode (with CO concentrations of 2 to 6-percent, which is 20,000 to 60,000 ppmv), HCN concentrations exiting the FCCU regenerator are much greater than for units using complete combustion FCCU regenerators or the concentration exiting a post-combustion device used in conjunction with a partial burn FCCU regenerator. Therefore, we maintain that complete combustion is the primary control needed to achieve controlled levels of HCN emissions.

We initially thought the higher levels of HCN emissions that were reported by sources achieving complete combustion might be due to a switch away from platinum-based combustion promoters to palladium-based combustion promoters. However, many of the units that were tested and that had some of the lowest HCN emissions used palladium-based oxygen promoters. Therefore, it appears unlikely that

palladium-based catalyst promoters are linked to the higher HCN emissions. We also evaluated one commenter's argument that CO is not a good surrogate for HCN emissions, but that SCR are a reasonable and cost-effective control strategy. We are not aware of any data that suggest that an SCR removes HCN and the commenter did not provide any support for that premise. At proposal, we evaluated HCN control on units using extra oxygen or converting back to platinum-based promoters to oxidize any HCN formed. This would cause more NO_x formation, which would then require post-combustion NO_x control, such as an SCR. However, if HCN emissions are not a function of CO concentration beyond that required to achieve complete combustion (as noted by the commenter), then more aggressive combustion conditions and the use of an SCR (to remove the NO_x formed) may not be a viable control strategy. Therefore, considering all of the data currently available and the comments received regarding HCN emissions and controls, we maintain that the only proven control technique is the use of complete combustion as defined by a CO level of 500 ppmv or less. We are not establishing a more stringent CO level because, once complete combustion is achieved, (*i.e.*, CO concentrations drop below 500 ppmv), no further reduction in HCN emissions are achieved.

For the purposes of Refinery MACT 2, we consider the emission limits and operating requirements for organic HAP in Tables 8 through 14 to subpart UUU of part 63 adequate to also limit HCN emissions.

Finally, we understand concerns about the reported HCN emissions being higher than anticipated and the need for more data to better determine HCN emissions levels. To address these concerns, we are finalizing a requirement that facility owners or operators conduct a performance test for HCN from all FCCU at the same time they conduct the first PM performance test on the FCCU following promulgation of this rule. Facility owners or operators that conducted a performance test for HCN from a FCCU in response to the refinery ICR or subsequent to the 2011 Petroleum Refinery ICR following appropriate methods are not required to retest that FCCU.

4. What is the rationale for our final approach for the technology review?

a. Refinery MACT 1

We did not receive substantive comments concerning our proposal that it was not necessary to revise Refinery MACT 1 requirements for MPV, gasoline loading racks and cooling towers/heat exchange systems. Based on the rationale provided in the preamble to the proposed rule, we are taking final action concluding that it is not necessary pursuant to CAA section 112(d)(6) to revise the MACT requirements for MPV, gasoline loading racks and cooling towers/heat exchange systems emission sources at refineries.

We proposed that the options for additional wastewater controls are not cost effective and thus it was not necessary to revise the MACT for these emission sources. We received public comments suggesting that emissions from wastewater systems are higher than modeled and that we should develop additional technology standards for wastewater treatment systems regardless of cost. As we discussed in the proposal, emissions from wastewater are difficult to measure and emission estimates rely on process data and empirical correlations, which introduces uncertainty into the estimates. Although we do not have evidence, based on the process data we collected, that emissions are higher than modeled at proposal, we note that the fence-line monitoring program effectively ensures that wastewater emissions are not significantly greater than those included in the emissions inventory and modeled in the risk assessment. Furthermore, we believe that cost is a valid consideration in determining whether it is necessary within the meaning of section 112(d)(6) to revise requirements and that we are not required to establish additional controls regardless of cost. Consequently, we conclude that it is not necessary to revise the Refinery MACT 1 requirements for wastewater systems pursuant to CAA section 112(d)(6).

For storage vessels, we identified a number of options, including requiring tank fitting controls for external and internal floating roof tanks, controlling smaller tanks with lower vapor pressures and requiring additional monitoring to prevent roof landings, liquid level overfills and to identify leaking vents as developments in practices, processes and control technology. We proposed to cross-reference the storage vessel requirements in the Generic MACT (effectively requiring additional control for tank roof fittings) and to revise the

¹⁰ U.S. EPA, 2001. Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units—Background Information for Promulgated Standards and Response to Comments. Final Report. EPA-453/R-01-011. June. p. 1-19.

definition of Group 1 storage vessels to include smaller tanks with lower vapor pressures. We received comments that we could have required additional controls on tanks and monitoring for landings, overfills and leaking vents described above. We also received comments related to clarifications of specific rule references and overlap provisions. We addressed these comments in the "Response to Comments" document, and we maintain that the additional control options described by the commenters (tank roof landing/degassing requirements or use of geodesic domes to retrofit external floating roofs) are not cost-effective. Consequently, based on the rationale provided in the preamble to the proposed rule and our consideration of public comments, we are finalizing the requirements as proposed with minor clarifications of the rule references. However, as with wastewater systems, we note that the fenceline monitoring program will ensure that the owner or operator is effectively managing fugitive emissions sources and should detect landings, overfills, and leaking vents.

For equipment leaks, we identified specific developments in practices, processes and control technologies that included requiring repair of leaking components at lower leak definitions, requiring monitoring of connectors, and allowing the use of the optical imaging camera as an alternative method of monitoring for leaks. We proposed to establish an alternative method for refineries to meet LDAR requirements in Refinery MACT 1. This alternative would allow refineries to monitor for leaks via optical gas imaging in place of EPA Method 21, using monitoring requirements to be specified in a not yet proposed appendix K to 40 CFR part 60. However, the development of appendix K is taking longer than anticipated. Therefore, we are not finalizing this alternative monitoring method in Refinery MACT 1.

We received comments suggesting that additional requirements be imposed to further reduce emissions from leaking equipment components, such as requiring "leakless" equipment, reducing the leak threshold, and eliminating delay of repair provisions. As provided in the "Response to Comments" document, we do not agree that these additional requirements are cost-effective. Based on the rationale provided in the preamble to the proposed rule and our consideration of public comments, we conclude that it is not necessary to revise the Refinery MACT 1 requirements for equipment leaks. Again, however, the fenceline monitoring program is intended to

ensure that large leaks from fugitive emissions sources, including equipment leaks, are more quickly identified and repaired, thereby helping to reduce emissions from leaking equipment components.

For marine vessel loading, we identified control of marine vessel loading operations with HAP emissions of less than 10/25 tpy and the use of lean oil absorption systems as developments that we considered in the technology review. We proposed to amend 40 CFR part 63, subpart Y to require small marine vessel loading operations (*i.e.*, operations with HAP emissions less than 10/25 tpy) and offshore marine vessel loading operations to use submerged filling based on the cargo filling line requirements in 46 CFR 153.282. We received comments that other options considered during the technology review of the standard were cost-effective for small marine vessel loading operations and should be required. As provided in the "Response to Comments," we continue to believe those other controls are not cost-effective because of the high costs of controls for limited additional organic HAP emission reduction. Therefore, we are finalizing these amendments as proposed.

Finally, we proposed that it was necessary to revise the MACT to require fenceline monitoring as a means to manage fugitive emissions from the entire petroleum refinery, which includes sources such as wastewater collection and treatment operations, equipment leaks and storage vessels. We received numerous comments regarding the proposed requirement to conduct fenceline monitoring, many of which we address above and the remainder of which we respond to in the "Response to Comments" document. After considering comments, we maintain that the proposed work practice standard is authorized under section 112 of the CAA and will improve fugitive management at the refinery. Therefore, we are finalizing the key components of fenceline monitoring work practice as proposed. These requirements include the use of passive diffusive tube samplers (although we are providing a mechanism to request approval for alternative monitoring systems provided certain criteria are met), the 9 $\mu\text{g}/\text{m}^3$ on a rolling annual average basis action level, and the need to perform corrective action to comply with the action level.

Based on public comments received, we are making numerous revisions to clarify the fenceline monitor siting requirements. This includes provisions

to allow siting of monitors within the property boundary as long as all emissions sources at the refinery are included within the monitoring perimeter. We are also clarifying that we do not consider public roads or public waterways that bisect a refinery to be property boundaries, and owners or operators do not need to place monitors along the internal public right-of-ways. We are also providing provisions to allow fixed placement of monitors at 500 feet intervals (with a minimum of 3 monitors) for subareas or segregated areas. If an emissions source is near the monitoring perimeter, an additional monitor siting requirement would still apply. The 500 feet provision is provided to reduce burden for facilities with irregular shapes or noncontiguous property areas that we did not fully consider at proposal.

We also received comments on the compliance time and reporting requirements associated with the fenceline monitoring provisions. Upon consideration of public comments, we have revised the compliance period to 2 years after the effective date of the final rule. Thus, beginning no later than 2 years after the effective date of the rule, the source must have a fenceline monitoring system that is collecting samples such that the first rolling annual average ΔC value would be completed no later than 3 years after the effective date of the final rule. Facilities will have 45 days after the completion of the first year of sampling, as proposed, to submit the initial data set. We are reducing the proposed compliance period from 3 years to 2 years because the passive diffusive tube monitors are easy to deploy and pilot study demonstrations indicate that significant time is not needed to deploy the monitors. However, the reduced compliance period still provides time to resolve site-specific monitor placement issues and to provide time to develop and implement a site-specific monitoring plan, if needed. We are increasing the fenceline monitoring reporting frequency (after the first year of data collection) from semiannually to quarterly to provide more timely dissemination of the data collected via this monitoring program.

b. Refinery MACT 2

We proposed to revise Refinery MACT 2 to incorporate the developments in monitoring practices and control technologies reflected in the Refinery NSPS subpart Ja limits and monitoring provisions (73 FR 35838, June 24, 2008). We are finalizing most of these provisions as proposed. Specifically, we are incorporating the

Refinery NSPS subpart Ja PM limit for new FCCU sources. We are also finalizing compliance options for FCCU that are not subject to Refinery NSPS subpart J or Ja. These options would allow such sources to elect to comply with the Refinery NSPS subpart Ja monitoring provisions to demonstrate compliance with the emissions PM limit. We are revising the averaging period for the control device operating limits or site-specific opacity limits to be on a 3-hour average basis in order to more directly link the operating limit to the duration of the performance test runs, on which they are based, as proposed. We are incorporating additional control device-specific monitoring alternatives for various control devices on FCCU, including BLD monitoring as an option to COMS for owners or operators of FCCU using fabric filter-type control systems and total power and secondary current operating limits for owners or operators of ESPs. We are adding an additional requirement to perform daily checks of the air or water pressure to atomizing spray nozzles for owners or operators of FCCU wet gas scrubbers not subject to the pressure drop operating limit, as proposed. Finally, we are finalizing requirements to conduct a performance test at least once every 5 years for all FCCU, as proposed. These requirements are being finalized to ensure that control devices are continuously operated in a manner similar to the operating conditions of the performance test and to ensure that the emissions limits, which are assessed based on the results of three 1-hour test runs, are achieved at all times.

We also proposed to eliminate the Refinery NSPS subpart J compliance option that allows refineries to meet the 30-percent opacity emissions limit requirement and revise the MACT to include control device operating limits or site-specific opacity limits identical to those required in Refinery NSPS subpart Ja. We received numerous comments, particularly from owners or operators of FCCU that employ tertiary cyclones to control FCCU PM emissions. According to the commenters, opacity is not a direct indicator of PM emissions because finer particles will increase opacity readings without a corresponding mass increase in PM emissions. Additionally, the commenters stated that the site-specific opacity limit generally leads to a site-specific operating limit of 10-percent opacity, which is too stringent and does not adequately account for variability between PM emissions and opacity readings. According to the commenters,

FCCU with tertiary cyclones would need to be retrofitted with expensive and costly controls in order to meet the 10-percent opacity limit, even though they are meeting the 1 lb/1000 lbs coke burn PM emissions limit. It was not our intent to require units to retrofit their controls simply to meet the site-specific opacity limit. However, the existing 30-percent opacity limit in the subpart J compliance option is not adequate to ensure compliance with the PM emissions limit at all times. After reviewing the public comments and available data, we determined that, rather than removing the subpart J compliance option altogether, it is sufficient to add an opacity operating limit of 20-percent opacity determined on a 3-hour average basis to the existing subpart J compliance option and to require units complying with this operating limit to conduct annual performance tests (rather than one every 5 years) when the PM emissions measured during the source test are greater than 0.80 lb PM/1,000 lbs coke burn-off. These provisions improve assurance that these units are, in fact, achieving the required PM emissions limitation without requiring units to retrofit controls due to variability in the correlation of PM emissions and opacity.

We did not propose to revise the organic HAP emissions limits for FCCU to further address HCN emissions. We received numerous comments on this issue. We continue to believe that complete combustion is the appropriate control needed to control HCN emissions. Consequently, for the purposes of Refinery MACT 2, we are not changing the MACT standards to further reduce emissions of HCN. However, we understand that there are uncertainties and high variability in HCN emissions measured from FCCU. In order to address the need for more data to better characterize HCN emissions levels, we are finalizing a requirement for refinery owners or operators to conduct a performance test for HCN from all FCCU (except those units that were tested previously using acceptable methods as outlined in the 2011 Refinery ICR) during the first PM test required as part of the on-going compliance requirements for FCCU metal HAP emissions. These data will be useful to the EPA in understanding HCN emissions from FCCU and may help to inform future regulatory reviews for this source category.

We proposed that there have been no developments in practices, processes, and control technologies for CRU based on our technology review and that therefore it is not necessary to revise

these standards. Based on the rationale provided in the preamble to the proposed rule and our consideration of public comments, we are finalizing our conclusion.

For SRU, we identified the Refinery NSPS subpart Ja allowance for oxygen-enriched air as a development in practice and we proposed that it was necessary to revise the MACT to allow SRU to comply with Refinery subpart Ja as a means of complying with Refinery MACT 2. The key issue identified by commenters was that Refinery NSPS subpart Ja includes a flow monitoring alternative for determining the average oxygen concentration in the enriched air stream and that this was not included in the proposed amendments to Refinery MACT 2. This was an oversight on our part. We are, based on the rationale provided in the preamble to the proposed rule and our consideration of public comments, finalizing the SRU revisions as proposed but with inclusion of the flow monitoring alternative provisions that are in Refinery NSPS subpart Ja for this source.

C. Refinery MACT Amendments Pursuant to CAA Section 112(d)(2) and (d)(3)

1. What did we propose pursuant to CAA section 112(d)(2) and (d)(3) for the Petroleum Refinery source categories?

We proposed the following revisions to the Refinery MACT 1 and 2 standards pursuant to CAA section 112(d)(2) and (3)¹¹: (1) Adding MACT standards for DCU decoking operations; (2) revising the CRU purge vent pressure exemption; (3) adding operational requirements for flares used as APCD in Refinery MACT 1 and 2; and (4) adding requirements and clarifications for vent control bypasses in Refinery MACT 1.

For DCU, we proposed to require that prior to venting or draining, each coke drum must be depressured to a closed blowdown system until the coke drum vessel pressure is 2 psig or less. As proposed, the 2 psig limit would apply to each vessel opening/venting/draining event at new or existing affected DCU facilities.

For the CRU, we proposed to require that any emissions during the active

¹¹ The EPA has authority under CAA section 112(d)(2) and (d)(3) to set MACT standards for previously unregulated emission points. EPA also retains the discretion to revise a MACT standard under the authority of section 112(d)(2) and (3), see *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 189 (D.C. Cir. 2011), such as when it identifies an error in the original standard. See also *Medical Waste Institute v. EPA*, 645 F.3d at 426 (upholding EPA action establishing MACT floors, based on post-compliance data, when originally-established floors were improperly established).

purging or depressuring of CRU vessels meet the applicable organic HAP emission limitations in Tables 15 and 16 to subpart UUU regardless of the vessel pressure.

For flares, we proposed to remove cross references to the General Provisions requirements for flares used as control devices at 40 CFR 63.11(b) and to incorporate enhanced flare operational requirements directly into the Refinery MACT rules. The proposed rule amendments included:

- A ban on flaring of halogenated vent streams.
- A requirement to operate with continuously lit pilot flames at all times and to equip the pilot system with an automated device to relight the pilot if it is extinguished.
- A requirement to operate with no visible emissions except for periods not to exceed a total of 5 minutes during any 2 consecutive hours and to monitor for visible emissions daily.
- A requirement to operate with the flare tip velocity less than 60-feet-per-second or the velocity limit calculated by an equation provided in the proposed rule.
- A requirement to meet one of three combustion zone gas properties operating limits based on the net heating value, lower flammability limit, or combustion concentration. Owners or operators could elect to comply with any one of the three limits at any time. Two separate sets of operating limits were proposed: One for gas streams not meeting all three “hydrogen-olefin interaction criteria” specified in the rule and a more stringent set of limits for gas streams meeting all three hydrogen-olefin interaction criteria. The combustion zone net heating value considered steam assist rates but not “perimeter air” assist rates.
- For air-assisted flares, a requirement to meet an additional “dilution parameter” operating limit determined based on the combustion zone net heating values above, the diameter of the flare and the perimeter air assist rates.

The proposed amendments for flares also included detailed monitoring requirements to determine these operating parameters either through continuous parameter monitoring systems or grab sampling, detailed calculation instructions for determining these parameters on a 15-minute block average, and detailed recordkeeping and reporting requirements. We also proposed provisions to allow owners or operators to request alternative emissions limitations that would apply in place of the proposed operating limits.

We proposed to revise the definition of MPV to remove the current exclusion for in situ sampling systems (onstream analyzers). We also proposed to limit the exclusion for gaseous streams routed to a fuel gas system to apply only to those systems for which any flares receiving gas from the fuel gas system are in compliance with the proposed flare monitoring and operating limits. We note that we also proposed revisions related to monitoring of bypass lines, but these revisions were proposed to address concerns related to SSM releases and are described in further detail in section IV.D. of this preamble.

We proposed that emissions of HAP may not be discharged to the atmosphere from PRD in organic HAP service to address concerns related to SSM releases. To ensure compliance with this proposed amendment, we proposed to require that sources monitor PRD using a system that is capable of identifying and recording the time and duration of each pressure release and of notifying operators that a pressure release has occurred. This proposed requirement was addressed in section IV.A.4. of the preamble for the proposal.

2. How did the revisions pursuant to CAA section 112(d)(2) and (3) change since proposal?

We proposed identical standards for existing and new DCU decoking operations, but we are finalizing standards for new and existing sources that are not identical. We are finalizing provisions that will require owners or operators of existing DCU sources to comply with a 2 psig limit averaged over 60 cycles (*i.e.*, 60 venting events), rather than meet the 2 psig limit on a per venting event basis, as proposed. We are finalizing provisions that will require owners or operators of new DCU sources to comply with a 2.0 psig limit on a per event, not-to-exceed basis. We are adding one significant digit to the limit for new DCU affected sources because our re-review of permit requirements conducted in response to comments identified that the best performing DCU source is required to comply with a 2.0 psig limit on a per event basis. In response to comments regarding the proposed prohibition on draining prior to achieving the pressure limit, we are finalizing specific provisions for DCU with water overflow design and for double quenching.

For flares, we are not finalizing the ban that we proposed on halogenated vent streams and we are not finalizing the proposed requirement to equip the flare pilot system with an automated device to relight an extinguished pilot.

We are revising the MACT to include the proposed no visible emissions limit and the flare tip velocity limit as direct emissions limits only when the flare vent gas flow rate is below the smokeless capacity of the flare. Under the revised standard, when the flare is operating above the smokeless capacity, an exceedance of the no visible emission limit and/or flare tip velocity limit is not a violation of the standard but instead triggers a work practice standard. Flares operate above the smokeless capacity only when there is an emergency release event and thus the work practice standard is intended to address emissions during such emergency release events. (See section IV.D. of this preamble for more details regarding this work practice standard). We are also adding provisions that would allow sources to use video surveillance of the flare as an alternative to daily Method 22 visible emissions observations.

For flares, we are also simplifying the combustion zone gas property operating limits by finalizing a requirement only for the net heating value of the combustion zone gas. We are finalizing requirements that flares meet a minimum operating limit of 270 BTU/scf NHV_{cz} on a 15-minute average, as proposed, and we are allowing refinery owners or operators to use a corrected heat content of 1212 BTU/scf for hydrogen to demonstrate compliance with this operating limit. We are not finalizing separate combustion zone operating limits for gases meeting the hydrogen-olefin interaction criteria that were proposed. We are also not finalizing the alternative combustion zone operating limits based on lower flammability limit or combustibles concentration.

We are finalizing “dilution parameter” requirements for air-assisted flares, but we are providing a limit only for the net heating value dilution parameter. Similar to the requirements we are finalizing for the combustion zone parameters, we are finalizing requirements that flares meet a minimum operating limit of 22 BTU/ft² NHV_{dil} on a 15-minute average, as proposed, and we are allowing refinery owners or operators to use a corrected heat content of 1,212 BTU/scf for hydrogen to demonstrate compliance with this operating limit. We are not finalizing separate dilution parameter operating limits for gases meeting the hydrogen-olefin interaction criteria that were proposed. We are also not finalizing the alternative dilution parameter operating limits based on lower flammability limit or combustibles concentration.

We are providing an alternative to use initial sampling period and process knowledge for flares in dedicated service as an alternative to continuous or on-going grab sample requirements for determining waste gas net heat content.

We are finalizing revisions to the definition of MPV, as proposed.

We are establishing work practice standards that apply to PRD releases in place of the proposed prohibition on PRD releases to the atmosphere. The work practice standards that we are finalizing for PRD require refiners to establish proactive, preventative measures for each PRD to identify and correct direct releases of HAP to the atmosphere as a result of pressure release events. Over time, these proactive measures will reduce the occurrence of releases and the magnitude of releases when they occur, while avoiding the environmental disbenefits of having additional flare capacity on standby to control these unpredictable and infrequent events. Refinery owners or operators will be required to perform a root cause analysis/corrective action following such pressure release events. In addition, a second release event in a 3-year period from the same PRD with the same root cause on the same equipment is a deviation of the work practice standard. A third release event in a 3-year period from the same PRD is a deviation of the work practice standard regardless of the root cause. PRD release events related to force majeure events are not considered in these hard limits.

3. What key comments did we receive on the proposed revisions pursuant to CAA section 112(d)(2) and (3) and what are our responses?

i. DCU

Comment: Several commenters argued that the EPA incorrectly set the MACT floor emission limitation for DCU. Commenters noted that CAA section 112(d)(3)(A) states that the MACT limit for existing sources “shall not be less stringent, and may be more stringent than the average emission limitation achieved by the best performing 12-percent of the existing sources” excluding those first achieving that level within 18 months prior to proposal or 30 months prior to promulgation, whichever is later. According to the commenters, the EPA failed to follow this procedure in setting the 2 psig vent limit as a MACT floor because the EPA incorrectly considered permit limits and other non-performance based criteria instead of basing the MACT floor on the actual performance of sources.

Commenters stated that the EPA improperly considered permit limits that should have been excluded from consideration, as well as considering permit limits for closed facilities instead of using more accurate data from operating DCUs at sources that submitted actual emissions data. Specifically, commenters stated that the DCU at the non-operational plant (Hovenssa) should not be included. One commenter noted that they operate one of the South Coast DCU listed as subject to a 2 psig limit and asserted that it does not currently meet that emission limitation. The commenter claimed that significant capital investment would be required in order for the DCU to comply with the 2 psig limit. According to one commenter, data for six of the eight DCU they claim the EPA considered for the MACT floor should not be counted in determining the limit that represents the average emission limitation actually achieved 18 months prior to the proposal.

Response: CAA section 112(d)(3)(A) states that the existing source standard shall not be less stringent than the average emission limitation achieved by the best performing 12-percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 171) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources. We consider a 2 psig emissions limitation to be equivalent to the lowest achievable emission rate (LAER) emission limits. Thus, we agree with the commenter that sources that first meet the 2 psig limit on or after December 30, 2012, should be excluded from the MACT floor analysis. We also agree that under CAA section 112(d)(3)(A), the MACT floor analysis focuses on those sources that are achieving the emission limit (*i.e.*, the emission limitation “achieved by . . .”). The EPA has previously determined that the 6th-percentile unit is a reasonable estimate of the average emission limitation achieved by the best performing 12-percent of sources especially when averaging across units with and without control requirements. As noted in our DCU MACT floor

analysis memorandum (Docket ID No. EPA-HQ-OAR-2010-0682-0203), the 6th-percentile is represented by the fifth-best performing DCU. If we exclude the two South Coast refineries and the two Marathon Garyville DCU because these sources were not implementing the 2 psig permit limit prior to December 30, 2012, the fifth-best performing DCU would be represented by the Bay Area refineries (4.6 psig). However, based on the 2011 Petroleum Refinery ICR responses, 25 out of 75 (33-percent) DCU have a “typical coke drum pressure when first vented to the atmosphere” of 2 psig or less and 10 out of 75 (13-percent) DCU have a “typical coke drum pressure when first vented to the atmosphere” of 1 psig or less. While we acknowledge that these data represent “typical” operations and not necessarily a never-to-be-exceeded emissions limitation, we conclude that this information is sufficient for us to conclude that the average emission limitation achieved by the best performing 12-percent of sources is consistent with a 2 psig emissions limitation. This is because facility owners or operators commonly target to operate at approximately half the allowable emissions limit to ensure that they can comply with the emissions limit at all times. Therefore, we maintain that an average venting pressure of 2 psig is the MACT floor level for decoking operation at existing sources based on the ICR responses and considering the average performance expected.

Comment: Four commenters suggested that the 2 psig limit, if finalized, should be based on a rolling 30-day average per DCU rather than a never to be exceeded “instantaneous” standard. According to the commenters, an instantaneous standard is unnecessary to address HAPs with chronic health impacts and adds cost and compliance challenges. According to the commenters, chronic health impacts are not materially affected by short-term variability, but instead depend on the average concentration of exposure over a 70-year lifetime; therefore, there is no health based or environmental reason for requiring an instantaneous limit. The commenters noted that there would be additional capital costs to comply with a 2 psig not-to-be-exceeded limit compared to a 30-day average 2 psig limit vent pressure. One commenter specifically requested that the EPA also confirm that a pressure of 2.4 psig is compliant with the 2 psig limit vent pressure. Another commenter also requested clarification that the vent pressure can be rounded to

one significant figure when determining compliance.

Response: For new sources, the MACT floor emission limit for DCU is based on the best-performing source. Based on this and other comments received, we again reviewed existing permit conditions. Based on this review, we found that one of the permit requirements specified the pressure limit as 2.0 psig for each coke drum venting event. Therefore, we are finalizing the new source MACT floor as 2.0 psig on a per coke drum venting event basis.

As discussed in response to the previous comment, we are basing the MACT floor for existing source DCU on responses we received from the 2011 Petroleum Refinery ICR. Because the ICR requested the “typical coke drum pressure when first vented to the atmosphere,” we do not consider the information provided in ICR responses to reflect a “never-to-be-exceeded” limit. Therefore, we evaluated whether it is reasonable to allow averaging, and if so, what averaging period should be provided.

Health risks are not considered in establishing MACT requirements, so we do not consider the argument that chronic effects are evaluated over a 70-year period to be relevant to a determination of the MACT floor. However, a primary consideration regarding averaging periods is how the averaging period was considered in setting the floor and whether the intended reductions will occur under a different averaging period. According to the heat balance method for estimating DCU emissions, DCU decoking operations emissions are directly proportional to the average bed temperature. While the relationship is not exactly linear, the average bed temperature is expected to be a function of the venting pressure. Moreover, the shape of the pressure-temperature correlation curve is such that the emissions at 6 psig are almost exactly but not quite three times the emissions at 2 psig. Given the expected linearity of the emissions with venting pressures, we are not concerned with an occasional venting event above 2 psig because the average emissions from a facility meeting an average 2 psig pressure limit would be identical to the emissions achieved by a facility that vented each time at 2 psig. That is, given the expected linearity in the projected DCU emissions to the venting pressure, we conclude that it is reasonable to allow averaging across events and that the precise averaging period is not a critical concern.

Most industry commenters requested a 30-day average. However, different facilities have different numbers of DCU, different numbers of drums per DCU and different cycle times. Consequently, basing the averaging period across a given time period would result in significantly different number of venting events included in a 30-day average for different facilities and generally provide more flexibility to larger refineries and less flexibility to smaller refineries. Based on the ICR responses, almost half of all DCU operate with two drums and about 90-percent of DCU have two to four coke drums; however, a few DCU have six or even eight drums. Also, based on the ICR responses, the average complete coke drum cycle time is 32 hours, but can be as short as 18 hours and as long as 48 hours. Reviewing the ICR responses, we found that a 30-day average would include 30 events for some facilities and more than 250 events at other facilities.

Since the existing source MACT standards apply “in combination” to “all releases associated with decoking operations” at a given facility, we determined that it was reasonable to consider an averaging period that applies to the number of venting events from all coke drums at the facility rather than to all coke drums for a specific DCU for a specified period of time. This provides a more consistent basis for the averaging period and allows the same operational flexibility for small refineries as large refineries. Based on the ICR responses, the median (typical) DCU has 60 venting events in a 30-day period. Providing an averaging period of 60 venting events provides a more consistent averaging basis for all facilities, regardless of the number of DCU at the facility and the number of drums and cycle times for different DCU. Additionally, it eliminates issues with respect to how to handle operating days versus non-operating days, *e.g.*, in the event of a turn-around resulting in a limited number of venting events in a 30-calendar day period. Therefore, we are establishing a 2 psig limit based on a 60-event average considering all coke drum venting events at an existing source and we are finalizing a 2.0 psig limit on a per coke drum venting event for DCU at new sources.

We have consistently maintained our policy to round to the last digit provided in the emission limit, a pressure of 2.4 psig would round to 2 psig and would be compliant with a requirement to depressure each coke drum to a closed blowdown system until the coke drum vessel pressure is 2 psig or less, but it would not be

compliant with the revised new source provision to depressure until the coke drum vessel pressure is 2.0 psig or less. A coke drum pressure of 2.04, however, would be compliant with the revised new source requirement pressure limit of 2.0 psig.

ii. Refinery Flares

Comment: Several commenters suggested that the proposed flare operating limits were too complex. The commenters recommended that the EPA eliminate the dual flare combustion zone heat content limits related to the proposed hydrogen-olefin interaction criteria and instead finalize a single combustion zone net heating value of approximately 200 BTU/scf, which would minimize the unnecessary burning of supplemental gas but still ensure good combustion efficiency.

A few commenters suggested that the EPA based the proposed combustion zone limits on an invalid data analysis, that the 1 minute PFTIR data should not be used to establish combustion efficiency correlations, and that the emission limits should be set so as to provide an equal chance of false positives and negatives. A few commenters suggested that the EPA should assign hydrogen a heating value of 1,212 BTU/scf to more accurately reflect its flammability in a NHV basis and that doing so is consistent with some recent flare consent decrees and would help reduce natural gas supplementation for facilities complying only with the NHVcz metric.

Several commenters suggested that neither scientific literature nor the available flare test data support the EPA's claim of an adverse hydrogen-olefin interaction on combustion efficiency and that the EPA should not finalize the more restrictive combustion zone operating limits for all flare types. These commenters suggested that the EPA did not provide any evidence the assumed hydrogen-olefin effect actually exists; that statistical analysis demonstrates the EPA developed their limit based on random differences in data; that the PFTIR data analysis method of using the individual minute-by-minute data instead of the test average data is flawed and leads to invalid conclusions; and that proper analysis of the data demonstrates the more stringent operating limits for hydrogen-olefin conditions cannot be supported.

Some commenters suggested that there is evidence to support more stringent flare combustion zone limits for a narrowly defined high concentration propylene-only condition as outlined in some of the recent flare

consent decrees but that the flare test data do not support more stringent operating limits for the proposed hydrogen-olefins criteria by the EPA. Additionally, one commenter suggested that if the EPA decides to proceed with the more restrictive combustion zone limits for the hydrogen-olefins interaction cases then the final rule should not expand beyond an interaction between hydrogen and propylene.

Several commenters suggested that the proposed 15-minute feed forward averaging time for flares (*e.g.*, combustion zone parameters, air-assist dilution parameters and associated flow rates) is arbitrary, unrealistic and unworkable and that the feed forward compliance determination should not be finalized and, if it is finalized, the averaging time should be extended to 1-hour, 3-hour, or 24-hour. To support these suggested averaging periods, commenters claimed that typical standards for combustion devices are averaged over these suggested timeframes, noting as an example, recent refinery flare consent decrees that contain a 3-hour average. The commenters also asserted that both a GC and calorimeter will be needed to obtain data rapidly enough to try and maintain a 15-minute average; that the feed forward approach requires calculation artifices to attempt to correct for the fact that compliance cannot be determined until the averaging period is over; and that a longer averaging time is needed for instrument and control response time.

Response: In addressing these comments, we further analyzed the flare emissions test data. First, to address concerns that the minute-by-minute analysis produced flawed results, we re-compiled the data into approximate “15-minute averages” to the extent practical based on the duration of a given test run (*e.g.*, a 10-minute run was used as 1 run and a 32-minute run was divided into 2 runs of 16 minutes each). We do not find significant differences in the data or that different conclusions would be drawn from the data based on this approach as compared with the minute-by-minute analysis used for the proposed rule.

Next, we evaluated the 15-minute run data using the normal net heating value for hydrogen of 274 Btu/scf, which is the value we used in the analysis for the proposed rule and also evaluated the data using the 1,212 Btu/scf, the value recommended by some commenters. The 1,212 Btu/scf value is based on a comparison between the lower flammability limit and net heating value of hydrogen compared to light organic

compounds and has been used in several consent decrees to which the EPA is a party. Based on our analysis, we determined that using a 1,212 Btu/scf value for hydrogen greatly improves the correlation between combustion efficiency and the combustion zone net heating value over the entire array of data. Using the net heating value of 1,212 Btu/scf for hydrogen also greatly reduced the number of “type 2 failures” (instances when the combustion efficiency is high, but the gas does not meet the NHVcz limit). One of the primary motivations for the proposed approach to provide alternative limits based on lower flammability limits and combustibles concentrations was to reduce these type 2 failures. Therefore, we proposed all three of these parameters (*i.e.*, NHVcz, LFL and total combustibles) and allowed flare owners or operators to comply with any of the parameter limits at any time. When using the net heating value of 1,212 Btu/scf for hydrogen, the other two alternatives no longer provide any improvement in the ability to predict good flare performance. Consequently, we are simplifying the operating limits to use only NHVcz.

Next, we re-evaluated whether to finalize the proposed dual combustion zone operating limits for refinery flares that met certain hydrogen-olefins interactions or to finalize a single combustion zone net heating value limit. The newly re-compiled PFTIR run average flare dataset suggests that higher operating limits may be appropriate for some olefin-hydrogen mixtures. However, the dataset using 15-minute test average runs is much smaller than the set using 1-minute runs and thus creates a greater level of uncertainty. In addition, we cannot definitively conclude that a dual combustion zone limit for refinery flares meeting certain hydrogen-olefins interactions is appropriate given these uncertainties. Thus, in order to minimize these uncertainties and streamline the compliance requirements, we used all of the 15-minute test run average data together as a single dataset in an effort to determine an appropriate, singular combustion zone net heating value operational limit.

Finally, we conducted a Monte Carlo analysis to help assess the impacts of extending the averaging time on the test average flare dataset of 15-minute runs to 1-hour or 3-hour averaging time alternatives. While we consider it reasonable to provide a longer averaging time for logistical reasons, the Monte Carlo analysis demonstrated, consistent with concerns described in our proposal, that short periods of poor

performance can dramatically limit the ability of a flare to achieve the desired control efficiency. Consequently, we find it necessary to finalize the proposed 15-minute averaging period to ensure that the 98-percent control efficiency for flares is achieved at all times. However, we understand that flare vent gas flow and composition are variable. While a short averaging time is needed to ensure adequate control given this variability, we also understand the complications that this variability places on flare process control in efforts to meet the NHVcz limit. Therefore, we are clarifying that the 270 Btu/scf NHVcz value is an operational limit that must be calculated according to the requirements in this rule. We also clarify that compliance with this operational limit must be evaluated using the equations and calculation methods provided in the rule. We proposed a feed forward calculation method to allow refinery owners or operators a means by which to adjust steam (or air) and, if necessary, supplemental natural gas flow, in order to meet the limit. In other words, “feed forward” refers to the fact that the rule requires the refinery owners or operators to use the net heating value of the vent gas (NHVvg) going into the flare in one 15-minute period to adjust the assist media (*i.e.*, steam or air) and/or the supplemental gas in the next 15-minute period, as necessary for the equation in the rule to calculate an NHVcz limit of 270 BTU/scf or greater. We recognize that when a subsequent measurement value is determined, the instantaneous NHVcz based on that compositional analysis and the flow rates that exist at the time may not be above 270 Btu/scf. We clarify that this is not a deviation of the operating limit. Rather, the owner or operator is only required to make operational adjustments based on that information to achieve, at a minimum, the net heating value limit for the subsequent 15-minute block average. Failure to make adjustments to assist media or supplemental natural gas using the equation provided for calculating an NHVcz limit of 270 BTU/scf, using the NHVvg from the previous period, would be a deviation of the operating limit.

Alternatively, if the owner or operator is able to directly measure the NHVvg on a more frequent basis, such as with a calorimeter (and optional hydrogen analyzer), the process control system is able to adjust more quickly, and the owner or operator can make adjustments to assist media or supplemental natural gas more quickly. In this manner, the owner or operator is not limited by

relying on NHVvg data that may not represent the current conditions. Therefore, the owner or operator may opt to use the NHVvg from the same period to comply with the operating limit.

Based on the results of all of our analyses, the EPA is finalizing a single minimum NHVcz operating limit for flares subject to the Petroleum Refinery MACT standards of 270 BTU/scf during any 15-minute period. The agency believes, given the results from the various data analyses conducted, that this operating limit is appropriate, reasonable and will ensure that refinery flares meet 98-percent destruction efficiency at all times when operated in concert with the other suite of requirements refinery flares need to achieve (e.g., flare tip velocity requirements, visible emissions requirements, and continuously lit pilot flame requirements). For more detail regarding our data re-analysis, please see the memorandum titled "Flare Control Option Impacts for Final Refinery Sector Rule" in Docket ID No. EPA-HQ-OAR-2010-0682.

Comment: Numerous commenters objected to the proposed requirements to have the velocity and visible emissions limits apply at all times for flares. Commenters suggested that flares are not designed to meet the visible emissions and flare tip velocity requirements when being operated beyond their smokeless capacity and suggested several alternative approaches: remove the visible emissions and flare tip velocity requirements from the rule altogether; exempt flares from these requirements during emergencies; or add a requirement to maintain a visible flame present at all times or include a work practice standard in the rule when flares are operated beyond their smokeless capacity at full hydraulic load. The commenters identified full hydraulic load as the maximum flow the flare can receive based on the piping diameter of the flare header and operating pressure of processes connected to the flare header system. They also specified that full hydraulic load would only occur if all sources connected to the flare header vented at the same time, which might result from an emergency shutdown due to a plant-wide power failure. According to commenters, flares are typically designed to operate in a smokeless manner at 20 to 30-percent of full hydraulic load. Thus, they claimed, flares have two different design capacities: A "smokeless capacity" to handle normal operations and typical process variations and a "hydraulic load capacity" to handle very large volumes

of gases discharged to the flare as a result of an emergency shutdown. According to commenters, this is inherent in all flare designs and it has not previously been an issue because the flare operating limits did not apply during malfunction events. However, if flares are required to operate in a smokeless capacity during emergency releases, the commenters claimed that refineries would have to quadruple the number of flares at each refinery to control an event that may occur once every 2 to 5 years.

To support their suggestions, commenters pointed out that flaring during emergencies is the optimum way of handling very large releases and that the flare test data clearly demonstrate that visible emissions and/or high flare tip velocity do not suggest poor destruction efficiency during such events. The commenters also argued that operators should not have conflicting safety and environmental considerations to deal with during these times. The commenters stated that refineries are still subject to a civil suit even if the EPA uses its enforcement discretion where such a release would violate the limit and in order to avoid such liability, many new flares would have to be built. Commenters estimated that 500 new large flare systems at a capital cost in excess of \$10–20 billion would need to be built because of the amount of smokeless design capacity that would be needed and that this significant investment would take the industry at least a decade to install.

Response: At the time of the proposed rule, we did not have any information indicating that flares were commonly operated during emergency releases at exit velocities greater than 400 ft/sec (which is 270 miles per hour (mph)). Similarly, we did not have information to indicate that flares were commonly designed to have a smokeless capacity that is only 20 to 30-percent of their "hydraulic load capacity." While we are uncertain that refineries actually would install additional flares to the degree the commenters claim, based on the possibility that there may be an event every 2 to 5 years that would result in a deviation of the smokeless limit, we also recognize that it would be environmentally detrimental to operate hundreds of flares on hot standby in an effort to never have any releases to a flare that exceed the smokeless capacity of that flare. This is because operating hundreds of new flares to prevent smoking during these rare events will generate more ongoing emissions from idling flares than the no visible emissions limit might prevent during one of these events. Therefore, we

considered alternative operating limits or alternative standards that could apply during these emergency release events.

As an alternative to the proposed requirement that flares meet the visible emissions and velocity limits at all times, we considered a work practice standard for the limited times when the flow to the flare exceeds the smokeless capacity of the flare. Owners or operators of flares would establish the smokeless capacity of the flare based on design specification of the flare. Below this smokeless capacity, the velocity and visible emissions standards would apply as proposed. Above the smokeless capacity, flares would be required to perform root cause analysis and take corrective action to prevent the recurrence of a similarly caused event. Multiple events from the same flare in a given time period would be a deviation of the work practice standard. *Force majeure* events would not be included in the event count for this requirement.

Based on industry claims that there is a hydraulic load flaring event, on average, every 4.4 years, we assumed the best performers would have no more than one event every 6 years, or a probability of 16.7-percent of having an event in any given year. We found that, over a long period of time such as 20 years, half of these best performers would have 2 events in a 3 year period, which would still result in over half the "best performing" flares having a deviation of the work practice standard if it was limited to 2 events in 3 years. Conversely, only 6 percent would have 3 events in 3 years over this same time horizon. Based on this analysis, 3 events in 3 years would appear to be "achievable" for the average of the best performing flares.

Pursuant to CAA section 112(d)(2) and (3), we are finalizing a work practice standard for flares that is based on the best practices of the industry, and considers the rare hydraulic load events that inevitably occur at even the best performing facilities.

The best performing facilities have flare management plans that include measures to minimize flaring during events that may cause a significant release of material to a flare. Therefore, we are requiring owners or operators of affected flares to develop a flare management plan specifically to identify procedures that will be followed to limit discharges to the flare as a result of process upsets or malfunctions that cause the flare to exceed its smokeless capacity. We are specifically requiring refinery owners or operators to implement appropriate prevention measures applicable to these

emergency flaring events (similar to the prevention measures we are requiring in this final rule to minimize the likelihood of a PRD release). Refiners will be required to develop a flare minimization plan that describes these proactive measures and reports smokeless capacity. Refiners will need to conduct a specific root cause analysis and take corrective action for any flare event above smokeless design capacity that also exceeds the velocity and/or visible emissions limit. If the root cause analysis indicates that the exceedance is caused by operator error or poor maintenance, the exceedance is a deviation from the work practice standard. A second event within a rolling 3-year period from the same root cause on the same equipment is a deviation from the standard. Events caused by *force majeure*, which is defined in this subpart, would be excluded from a determination of whether there has been a second event. Finally, and again excluding *force majeure* events, a third opacity or velocity limit exceedance occurring from the same flare in a rolling 3-year period is a deviation of the work practice standard, regardless of the cause.

Comment: Several commenters suggested that the EPA should revise the combustion efficiency requirements to apply only to steam-assisted flares used as Refinery MACT control devices during periods of time that the flares are controlling Refinery MACT regulated streams. One commenter suggested that the EPA misused the TCEQ data in proposing the $NH_{V_{cz}}$ metric and that the proposed limits are overly conservative. The commenter requested that the EPA work with stakeholders to conduct additional testing to determine what, if any, operating parameters are appropriate and necessary to achieve an adequate destruction efficiency for non-steam-assisted flares.

Response: We disagree with the commenters that the combustion efficiency requirements should apply only to steam-assisted flares. The available data (for runs where steam assist is turned off) as well as the available combustion theories suggest that the combustion zone net heating value minimum limit, which is the vent gas net heating value for unassisted or perimeter air-assisted flares, is necessary to ensure proper flare performance. While we agree that additional data on air-assisted flares would allow for a more robust analysis, the data we do have strongly indicate that air-assisted flares can be over-assisted and that the combustion efficiency of air-assisted flares that are

over-assisted is below 98-percent control efficiency.

Comment: A few commenters suggested that the proposed flare regulations should not apply to part 63, subpart R (gasoline loading) and subpart Y (marine vessel loading) facilities, and to part 61, subpart FF (benzene waste) facilities. The commenters recommended that flares associated with gasoline loading, marine vessel loading and wastewater treatment emissions need to comply only with the General Provisions for flares. Some of these commenters argued that these sources are more consistent in flow and composition than other refinery sources, so the new requirements are not necessary to ensure good combustion for these “dedicated” flares. Some commenters suggested that operators of flares with consistent flow and composition be allowed to use process knowledge or engineering judgment rather than be required to install continuous monitors or be subject to ongoing grab sampling requirements.

Some commenters noted that the required control efficiency for some refinery emissions sources subject to subpart CC sources is 95-percent. One commenter also requested that the EPA provide overlap provisions so flares used to control sources from different MACT sources would not have duplicative requirements.

Response: The regulatory revisions that we are finalizing apply to petroleum refinery sources subject to part 63, subparts CC and UUU. Gasoline loading, marine vessel loading and wastewater treatment operations that are part of the refinery affected source as defined at 40 CFR 63.640 are subject to subpart CC. Gasoline loading, marine vessel loading and wastewater treatment operations located at non-refinery source categories are not subject to part 63, subpart CC and, thus, would not be subject to the revisions to subpart CC being finalized in this action. To the extent that the commenters are requesting that the EPA establish flare requirements that would apply to flares that are not part of the refinery affected source, that request is beyond the scope of this rulemaking, which only addresses revisions to Refinery MACT 1 and 2. When we issue rules addressing requirements for other sources with flares, we will consider issues similar to those we considered in this action and determine at that time whether revisions to those other flare requirements are necessary.

The commenters note that some subpart CC emissions sources have only a control efficiency requirement of 95-percent. While this may be true, where

the owner or operator chooses to control these sources through the use of a flare, operation of that flare was subject to operational requirements in the General Provisions at 40 CFR 63.11 and the best performing flares were achieving 98-percent control at the time the General Provisions were promulgated. At the time the General Provisions were promulgated, we received no comments that the EPA should set different operational limits for flares that are controlling emissions from sources where the standard may vary by level of control efficiency and we see no basis to do so now. The purpose of the revisions to the flare operating requirements is to ensure that flares are operating consistent with the MACT floor requirements for any and all sources that may use flares as a control device (79 FR 36905, June 30, 2014). As the MACT floor control requirements of certain refinery sources that allow the use of a flare as a control device is 98-percent, we established operational limits to ensure flares used as control devices meet this MACT requirement.

To the extent that the commenters are requesting that the EPA establish an alternative monitoring approach for flares in dedicated service that have consistent composition and flow, we agree that these types of flares, which have limited flare vent gas streams, do not need to have the same type of ongoing monitoring requirements as those with more variable waste streams. Thus, we are establishing an option that refinery owners or operators can use to demonstrate compliance with the operating requirements for flares that are in dedicated service to a specific emission source, such as a wastewater treatment operation. Refinery owners or operators will need to submit an application for the use of this alternative. The application must include a description of the system, characterization of the vent gases that could be routed to the flare based on a minimum of 7 grab samples (14 daily grab samples for continuously operated flares) and specification of the net heating value that will be used for all flaring events (based on the minimum net heating value of the grab samples). We are also allowing engineering estimates to characterize the amount of gas flared and the amount of assist gas introduced into the system. For example, the use of fan curves to estimate air assist rates is acceptable. Flare owners or operators would use the net heating value determined from the initial sampling phase and measured or estimated flare vent gas and assist gas

flow rates, if applicable, to demonstrate compliance with the standards.

Comment: A few commenters suggested that the EPA's proposed work practice and monitoring standards for flares are CAA section 112(d) "developments" required by law and supported by the evidence, and reflect best practices at many refineries today. One commenter suggested that the EPA must allow companies with consent decrees to meet their consent decree requirements as an alternative compliance approach and in lieu of the proposed requirements.

Response: We proposed the enhanced monitoring requirements and operating limits under authority of CAA sections 112(d)(2) and (d)(3) to ensure that flares used to control regulated Refinery MACT 1 or 2 gas streams are meeting the prescribed control efficiencies established at the time the MACT standard was promulgated. And, we continue to believe that these revisions are appropriate under CAA sections 112(d)(2) and (d)(3). The commenter has not suggested, and we do not believe, that the revisions promulgated would differ in substance if they were instead promulgated under CAA section 112(d)(6).

In general, we expect that the NHV_{cz} monitoring requirements that we are finalizing for flares will be consistent with the requirements in various consent decrees. However, we have not conducted a rigorous evaluation of equivalency between various requirements and therefore we are not at this time providing an allowance for flare owners or operators to comply with the NHV_{cz} operating limits and any provisions for necessary monitoring needed in the consent decree in lieu of the NHV_{cz} limits and monitoring requirements established in this rule. In the event that an owner or operator wishes to continue complying only with the requirements of a consent decree, the rule contains provisions by which owner or operator can seek approval for alternative limits that are at least equivalent to the performance achieved from complying with the operating limits included in the final rule.

iii. Pressure Relief Devices

Comment: Several commenters suggested that the EPA develop a work practice approach for atmospheric PRD rather than a prohibition on releases. One commenter recommended that the EPA establish a work practice standard for atmospheric PRDs that requires refiners to implement a base level of preventative measures including: Basic process controls, instrumented alarms, documented and verified routine

inspection and maintenance programs, safety-instrumented systems, disposal systems, provide redundant equipment, increase vessel design pressure and systems that reduce fire exposure on equipment. Additionally, the commenter recommended that the EPA require refiners to perform root cause analysis and implement corrective action in the event of a release. The commenter stated these requirements would be similar to the root cause analysis/corrective action requirements recently promulgated for flares under NSPS subpart Ja and provided specific regulatory language for a proposed work practice approach. (See section 2.4.1.8 in Docket item EPA-HQ-OAR-2010-0682-0583.) One commenter requested that the EPA allow a process for companies to submit an application for case-by-case limits to be approved by the agency, either the EPA or a delegated state similar to the alternate NO_x limits for process heaters provided in NSPS subpart Ja. This commenter recommended that the EPA establish reasonable work practice standards, specifically suggesting that the EPA develop work practice standards consistent with API 521. The commenter stated that the EPA should provide an implementation period for compliance that goes beyond the timeframe provided under CAA section 112(d). The commenter added that the EPA should adopt specified changes to the definition of an atmospheric pressure relief safety valve and provided suggested regulatory language for a proposed work practice standard for PRDs in EPA-HQ-OAR-2010-0682-0549.

Another commenter stated that the EPA should require, as the Bay Area Air Quality Management District (BAAQMD) does, that any refinery that has a reportable PRD event must take certain steps to prevent such releases in the future (BAAQMD Rule 8-28-304). In particular, such a refinery must create a Process Hazard Analysis, meet the Prevention Measures Procedures specified in section 8-28-405, and conduct a failure analysis of the incident, to prevent recurrence of similar incidents (Id. Reg. section 8-28-304.1). If a second release occurs, then, within one year, the facility must vent its PRDs to a vapor recovery or disposal system that meets certain requirements (Id. Reg. section 8-28-304.2). The commenter asserted that the EPA's prohibition on releases to the atmosphere from PRD will ensure that refineries take the necessary steps to prevent such releases, or install control devices so that any releases from PRDs

that must occur are vented through a control device to reduce the amount of toxic air pollution they emit. At a minimum, the commenter stated, the EPA must prohibit these uncontrolled emissions and require monitoring and reporting to assure compliance and ensure that the emission standards apply at all times, as required by the Act. The commenter argued that the EPA must also, however, consider requiring the additional developments that have been put into place in the BAAQMD and also require control devices to be used for all PRD, as some local air districts require. In addition, the commenter supported the EPA's monitoring and reporting requirements for PRD releases and the proposed electronic reporting requirements, which the EPA recognized are needed to assure compliance and assist with future rulemakings and as that provision requires, the EPA also must make all information reported publicly available online promptly and in an accessible and understandable format.

Response: We agree that, under the proposal, refineries would consider installing add-on controls to comply with the prohibition on atmospheric releases from PRDs. In addition, they would consider venting these control devices to existing control devices, including flares. However, it may not be feasible to vent some or all of the PRDs to existing flares if the flares are near their hydraulic load capacity based on the processes already connected to the flares. Flares have negative secondary impacts when operated at idle conditions for the vast majority of time, which could be the case if they were installed solely to address PRD releases. These secondary impacts result from GHG, CO and NO_x emissions. Some PRDs may vent materials that are not compatible with flare control and would need to be vented to other controls.

To estimate the impact of the proposed prohibition on venting PRDs to the atmosphere, we estimated that at least one new flare per facility would be required to handle releases from PRDs, based on the number of atmospheric PRDs reported at refineries; that 60-percent of the PRDs could be piped to existing controls at minimal costs and the other 40-percent would have to be piped to new flares; and that, on average, each new flare would service 40 PRDs. Based on these assumptions, 151 new flares would be needed or approximately one new flare per refinery. At a capital cost of \$2 million for each new flare, which would not include long pipe runs, if needed, to PRD that are dispersed across the plant, we estimate that the capital cost of the

prohibition on venting to the atmosphere would exceed \$300 million. Considering the fuel needed (approximately 50,000 scf/day per flare) and a natural gas price of \$4.50 per 1,000 scf, we estimate the annual operating cost for these new flares to be \$12 million.

PRDs are unique in that they are designed for the purpose of releasing or “popping” as a safety measure to address pressure build-up in various systems—pipes, tanks, reactors—at a facility. These pressure build-ups are typically a sign of a malfunction of the underlying equipment. While it would be difficult to regulate most malfunction events because they are unpredictable and can vary widely, in the case of PRDs, they are equipment installed specifically to release during malfunctions and as such, we have information on PRDs in our 2011 Refinery ICR and through the SCAAMD and BAAQ rules to establish standards for them. After reviewing these comments, we thus examined whether it would be feasible to regulate these devices under CAA section 112(d)(2) and (3).

After reviewing the comments, we agree with the commenters who suggest that the BAAQMD rule, as well as a similar South Coast Air Quality Management District (SCAQMD) rule that address PRD releases (SCAQMD Rule 1173), provide work practice standards that reflect the level of control that applies to the best performers. Consequently, we developed a work practice standard for PRD based on a detailed MACT analysis considering the requirements in these rules. Our rationale for the selected MACT requirements is provided in section IV.C.4 of this preamble. The work practice standards that we are finalizing for PRDs require refiners to establish proactive measures for each affected PRD to prevent direct release of HAP to the atmosphere as a result of pressure release events. In the event of an atmospheric release, we are requiring refinery owners or operators to conduct root cause analysis to determine the cause of a PRD release event. If the root cause was due to operator error or negligence, then the release would be a deviation of the standard. For any other release (not including those caused by force majeure events), the owner or operator would have to implement corrective action. A second release due to the same root cause for the same equipment in a 3-year period would be a deviation of the work practice standard. Finally, a third release in a 3-year period would be a deviation of the work practice standard, regardless of the

root cause. *Force majeure* events would not count in determining whether there has been a second or third event.

With respect to defining “atmospheric pressure relief safety valve” as suggested by the commenter, we note that the June 30, 2014, proposed amendments in 40 CFR 63.648(j) used the term “relief valve” because this was a defined term in Refinery MACT 1. However, the proposed amendments included clauses such as “if the relief valve does not consist of or include a rupture disk.” Thus, we specifically intended to apply the pressure relief management requirements broadly to “pressure relief devices” and not just “valves.” To clarify this, we have revised the regulatory language to use the term “pressure relief device” rather than “relief valve” to clearly include rupture disks or similar types of equipment that may be used for pressure relief.

4. What is the rationale for our final approach and final decisions for the revisions pursuant to CAA section 112(d)(2) and (3)?

We revised the MACT floor determination for DCU sources. CAA section 112(d)(3)(A) requires the MACT floor for existing sources to exclude “. . . those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 171) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources.” Because we have determined that a 2 psig emissions limitation is equivalent with a LAER emission limit for DCU, we revised the MACT floor analysis in order to exclude sources that first met the 2 psig limit on or after December 30, 2012. For existing sources, based on the revised MACT analysis, we concluded that the MACT floor is still 2 psig. However, because the information on which we relied was submitted in response to the 2011 Petroleum Refinery ICR which requested “typical” venting pressures and because providing an allowance to average across venting periods does not reduce the emissions reductions achieved, we are providing a 60-event averaging period for existing sources in response to public comments received.

For new DCU sources, our revised analysis identified one DCU subject to permit emission limitations of 2.0 psig

pressure limit prior to venting on a per event basis. Under CAA section 112(d)(3), the MACT standard for new sources cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. Thus, we are finalizing a limit of 2.0 for new DCU sources. We note that as 2.0 psig limit is more stringent than a 2 psig limit because of the rounding convention of rounding to the number of significant digits for which the standard is expressed. For example, a 2.4 psig venting pressure is compliant with a 2 psig limit, while it is not compliant with a 2.0 psig limit.

We evaluated the costs of requiring existing sources to meet a 2.0 psig limit as a beyond-the-MACT-floor option. We determined the incremental cost of going from a 2 psig limit with an allowance to average over 60 events to a 2.0 psig limit on a per event basis was approximately \$70,000 per ton of HAP reduced considering VOC credits. Based on this high incremental cost-effectiveness, we concluded that the MACT floor requirement for existing DCU sources was MACT. As discussed in detail in the proposal, we do not consider it technically feasible to meet a 1 psig pressure limit (effectively a 1.4 psig limit) on a not-to-be-exceeded basis. Thus, we rejected this beyond the floor control option for both existing and new DCU sources. See the memorandum titled “Reanalysis of MACT for Delayed Coking Unit Decoking Operations” in Docket ID No. EPA-HQ-OAR-2010-0682 for additional details regarding our re-analysis of MACT for DCU decoking operations.

In response to comments received on the prohibition of draining prior to achieving the proposed pressure limit (see Section 7.2.1 in the “National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries—Background Information for Final Amendments: Summary of Public Comments and Responses” in Docket ID No. EPA-HQ-OAR-2010-0682), we are providing specific provisions to allow for draining under special conditions. The specific provision and our rationale for providing them are provided below.

First, we learned that certain DCU are designed to completely fill the drum with water and allow the water to overflow in the overhead line and drain to a receiving tank in order to more effectively cool the coke bed. Owners or operators of this DCU design were concerned that the water overflow may be considered a drain and also stated that overhead temperature rather than pressure would be a better indicator of effective bed cooling. In reviewing this

type of DCU design, we find that this design has some unique advantages to traditional DCU to effect better cooling of the coke drum, and therefore we do not want to preclude its use. Based on saturated steam properties, we determined that an overhead temperature of 220 °F would achieve equivalent or greater emissions reductions than a 2 psig pressure limitation and an overhead temperature of 218 °F would achieve equivalent or greater emissions reductions than a 2.0 psig pressure limitation. Therefore, we are including these temperature limits as alternatives to the 2 or 2.0 psig pressure limitations for existing and new DCU affected sources, respectively. With respect to the overflow “drain,” we remain concerned with emissions from draining superheated water. However, if submerged fill is used in the atmospheric tank receiving the overflow water, the superheated water will be cooled by the water within the tank and emissions that occur during the conventional draining of water (from the flashing of superheated water into steam) can be prevented. Therefore, we are allowing the use of water overflow provided the overflow “drain” water is hard-piped to the receiving tank via a submerged fill pipe (pipe below the existing liquid level) whenever the overflow water exceeds 220 °F.

Second, we received comments that, for conventional DCU (those not designed to allow water overflow), there is a limit to the maximum water level in the drum, which limits to some extent how much cooling water can be added to the coke drum. In rare cases, the coke drum does not cool sufficiently using the typical cooling steps. In this case, the common industry practice is to partially drain the coke drum and refill it with additional cooling water. This “double-quench” process is needed for safety reasons to sufficiently cool the coke drum contents prior to the decoking operations. Therefore, commenters requested provisions to allow double-quenching of the coke drum. We recognize the safety issues associated with coke blow-out during coke cutting if there is a portion of the coke bed that is not sufficiently cooled and we agree that double-quenching is an effective means to cool the coke drum in those rare instances that the typical cooling cycle does not sufficiently cool the coke drum contents, so we considered granting the commenters’ request. As noted previously, the primary concern with early draining of the coke drum is the emissions that are expected to occur as a result of draining superheated water.

We recognize, however, that the water temperature near the bottom of the coke drum is typically much lower than at the top of the coke drum. If the temperature of the water drained from the bottom of the coke drum remains below 210 °F, this would minimize steam flashing and associated HAP emissions since the water drained would not be superheated. We conclude that the use of double quenching is appropriate for cases when the coke drum is not sufficiently cooled using the normal cooling procedures provided the temperature of the water drained remains below 210 °F, and it is consistent with the practices of the best performing sources. Consequently, we are finalizing provisions to allow the use of double-quenching for DCU provided the temperature of the water drained remains below 210 °F.

For the CRU, we are finalizing the proposed revisions to require CRU that employ active purging to meet the MACT emissions limitations in Tables 15 and 16 in subpart UUU at all times regardless of vessel pressure. We received limited comments regarding our proposal; these comments generally concerned the costs associated with the proposed emissions limitations. As discussed in our proposal, and based on data submitted in response to the ICR, emissions using active purging are much higher than those not using active purging. In the original rule, we based the MACT floor on the best performing facilities that used sequential pressurizations and depressurizations rather than active purging. Thus, in the proposal, we concluded that allowing owners or operators to actively purge while at low pressures was inconsistent with the MACT floor emissions limitations achieved by the best performing 12-percent of sources when the MACT floor was originally established. As we are simply requiring these facilities to meet the same emission levels determined to be MACT, we do not consider costs of potential additional controls to be a viable rationale to allow these units to emit several times more HAP than the units upon which the MACT requirements were based and the emissions levels achieved in practice by the vast majority of other CRU sources.

For flares, we are finalizing proposed revisions to include detailed flare monitoring and operating requirements. We are including the flaring provisions for refineries in the Refinery MACT rules and removing the cross-references to the flaring requirements in the General Provisions. The final regulatory requirements differ from the proposed requirements in several respects. First,

we are not finalizing the ban on halogenated vent streams because we did not include sufficient justification or include cost estimates for this proposed provision and we did not include any monitoring requirements to ensure compliance with this ban on halogenated vent streams.

We are finalizing the proposed no visible emissions limit and the flare tip velocity limit but they will apply only when the flare vent gas flow rate is below the smokeless capacity of the flare. We received a number of comments stating that the no visible emissions limit and the flare tip velocity limit cannot be met during large malfunctions and emergency shutdown events. In response to comments, we are finalizing work practice standards for emergency flaring events using the proposed no visible emission limit and flare tip velocity limit as thresholds in the final rule to trigger root cause analysis when the flare vent gas flow rate is above the smokeless capacity of the flare. The final work practice standard includes requirements to develop a flare management plan, to implement prevention measures, and to perform root cause analysis and implement corrective action following each flaring event that exceeds the smokeless capacity of the flare. There is also a limit on the number of these flaring events that a given flare may have in the 3-year period. We are establishing these provisions because we now recognize that flares have two different design capacities: A smokeless design capacity and a hydraulic load capacity. We determined that the proposed visible emissions limit and the flare tip velocity limit for very large flow events are not the MACT floor for such events. The final work practice standards for flaring events are based on the best performing facilities and will result in emission reductions in a technically feasible manner without any negative secondary impacts.

We consider it appropriate to establish a work practice standard for flares as provided in CAA section 112(h). While it is possible to monitor gaseous streams going into the flare (as we have required for the flare operating requirements) it is not possible to design and construct a conveyance to capture the emissions from a flare. While knowledge of the composition and flow of gases entering the flare provides a reasonable basis for establishing operating requirements for normal operations, we have no data on flare performance under conditions in the hydraulic load range. While smoke in the flare exhaust is an indication of incomplete combustion, it is uncertain

how much deterioration of HAP destruction efficiency occurs during a smoking event. We also consider that the application of a measurement methodology for flare exhaust is not practicable due to technological and economic limitations. Passive FTIR has been used to determine combustion efficiency in flare exhaust, but these are essentially manual tests, and the measurement accuracy is dependent on how well the monitor is aligned with the flare exhaust plume. Changes in wind direction require manual movement of the monitoring system. It is also unclear if these systems can accurately measure combustion efficiency during high smoking events. These systems also require very specialized expertise, and we consider that it is both technologically and economically infeasible to measure flare exhaust emissions, particularly during high load events. Consequently, for emergency flare releases, we conclude that it is appropriate to establish a work practice standard as provided in CAA section 112(h).

We also received comments that the daily visible emissions observations were burdensome and unnecessary and some commenters suggested that facilities be allowed to use video surveillance cameras. We concluded that video surveillance cameras would be at least as effective as the proposed daily 5-minute visible emissions observations using Method 22. We are finalizing the proposed visible emissions monitoring requirements Method 22 and the alternative of using video surveillance cameras.

We are simplifying the combustion zone gas property operating limits in response to public comments received. Specifically, we are finalizing requirements that all flares meet a minimum operating limit of 270 BTU/scf NHV_{cz} on a 15-minute average, and we are providing that refiners use a corrected heat content of 1,212 BTU/scf for hydrogen to demonstrate compliance with this operating limit. We determined that a corrected heat content of 1212 BTU/scf for hydrogen provided a better indication of flare performance than without the correction. We also determined that the other combustion zone parameters, which were primarily proposed to provide suitable methods for flares that had high hydrogen concentrations, were no longer necessary when a 1,212 Btu/scf net heating value is used for hydrogen. Therefore, we are not finalizing the alternative combustion zone operating limits based on lower flammability limit or combustibles concentration. We are also not finalizing separate combustion

zone operating limits for gases meeting the proposed hydrogen-olefin interaction criteria. In our revised analysis of the data, we analyzed all of the data together and determined the 270 Btu/scf NHV_{cz} operating limit provided in the final rule would adequately ensure that flares achieve the desired 98-percent control efficiency regardless of the composition of gas sent to the flare.

For air-assisted flares, we are finalizing the additional "dilution parameter" operating limit only for the net heating value dilution parameter, NHV_{dil} . Similar to the requirements we are finalizing for the combustion zone parameters, we are finalizing requirements that flares meet a minimum operating limit of 22 BTU/ft² NHV_{dil} on a 15-minute average, and we are providing that refiners use a corrected heat content of 1,212 BTU/scf for hydrogen to demonstrate compliance with this operating limit. For the reasons explained above, we are not finalizing the proposed alternative dilution parameter operating limits based on lower flammability limit or combustibles concentration, and we are not finalizing separate dilution parameter operating limits for gases meeting the proposed hydrogen-olefin interaction criteria.

For flares in dedicated service, we are establishing an alternative to continuous or on-going grab sample requirements for determining waste gas net heating content to reduce the burden of sampling for flare waste gases that have consistent compositions. Flares in dedicated service can use initial sampling period and process knowledge to determine a fixed net heating value of the flare vent gas to be used in the calculations of NHV_{cz} and, if applicable, NHV_{dil} .

We are revising the definition of MPV to remove the exemption for in situ sampling systems for the reasons provided in the proposed rule.

We received comments recommending that a work practice standard be adopted for PRD rather than the proposed prohibition of atmospheric PRD releases. Commenters stated that the prohibition was infeasible due to the proposed immediate timing of the requirement and impractical due to cost considerations. After reviewing these comments as well as the BAAQMD rule (Regulation 8, Rule 8–28–304) and the SCAQMD rule (Rule 1173), we have determined that the work practice standards in these rules reflect the level of control that applies to the best performers. Therefore, we proceeded to evaluate appropriate MACT

requirements based on the provisions in these rules.

The BAAQMD rule requires sources to implement a minimum of three prevention measures to limit the possibility of a release. The BAAQMD uses a "release event" threshold of 10 lbs/day of organic or inorganic pollutants; the SCAQMD rule effectively uses a release event threshold of 500 lbs VOC/day. When a release event occurs, both rules require that the refiner perform a root cause analysis and take corrective action (including additional prevention measures). In addition, both rules require piping the PRD to a flare if there are more than two release events (releases above a certain release size threshold) in a 5-year period. Both rules include a number of exemptions for certain types of PRD that are not expected to release significant amounts of pollutants to the air or that are not feasible to control because of pressure considerations. These include PRD associated with storage tanks, vacuum systems and equipment in heavy liquid service as well as liquid thermal relief valves that are vented to process drains.

There are five refineries subject to the BAAQMD rule and seven refineries subject to the SCAQMD rule, accounting for 8-percent of refineries nationwide and representing the industry's best performers. We consider the BAAQMD rule to be the more stringent of the two because this rule requires sources to implement a minimum of three prevention measures to limit the possibility of a release (the SCAQMD rule has no similar requirement) and uses a lower mass threshold for what is considered a "release event" (10 lbs/day of organic or inorganic pollutants versus the 500 lbs VOC release threshold in the SCAQMD rule). Therefore, the BAAQMD rule is considered to be the MACT floor requirement for PRDs associated with new affected sources and the SCAQMD rule is considered to be the MACT floor for PRDs associated with existing affected sources.

In general, an open PRD is essentially the same as a miscellaneous process vent that is vented directly to the atmosphere. Consistent with our treatment of miscellaneous process vents and consistent with the two California rules, we believe that it is appropriate to exclude certain types of PRD that have very low potential to emit based on their type of service, size and/or pressure. For example, PRD that have a potential to emit less than 72 pounds per day of VOC, considering the size of the valve opening, design release pressure, and equipment contents, would be considered in a similar manner as Group 2 miscellaneous

process vents and would not require additional control. The two California rule requirements do not apply to PRD on storage tanks and vacuum systems. Most of these PRD have a design release pressure of 2.5 psig and thus have a very limited potential to emit. It is technically infeasible to pipe these sources to a flare (or other similar control system) because the back pressure in the flare header system generally exceeds 2.5 psig. We note that some storage tanks can operate at elevated pressure (*i.e.*, pressure tanks). Therefore, rather than follow exactly the requirements in the California rules, we determined it more practical to exclude PRD with design release pressure of less than 2.5 psig.

Any release from a PRD in heavy liquid service would have a visual indication of a leak and any repairs to the valve would have to be further inspected and, if necessary, repaired under the existing equipment leak provisions. Therefore, consistent with the BAAQMD rule, we are exempting PRD in heavy liquid service from the work practice standards we are establishing in this final rule.

Both the BAAQMD and SCAQMD rules exempt thermal expansion valves that are “vented to process drains or back to the pipeline.” We are unclear what is meant by “vented to process drains”; however, if a liquid is released from a PRD via hard-piping to a drain system that meets the control requirements specified in Refinery MACT 1, we consider that these PRD are controlled and they would not be subject to the work practice standard established in this final rule. Similarly, all PRD in light liquid service that are hard-piped to a controlled drain system (or back to the process or pipeline) are otherwise subject to a MACT requirement and would not be subject to the work practice standard.

In considering thermal relief valves not vented to process drains or back to the pipeline, we expect that releases from these thermal relief valves will be small and generally under the release event thresholds specified in the California rules. Therefore, the work practice standards do not apply to PRD that are designed solely to release due to liquid thermal expansion.

The primary goal of the PRD work practice standard is to reduce the size and frequency of releases. The SCAQMD rule is targeted towards fairly large releases (compared to the direct PRD releases reported in response to the Refinery ICR), so it will reduce the frequency of large releases, but it does little to reduce the frequency of smaller releases. To more effectively reduce the

size and frequency of all releases, we consider it important to require the implementation of prevention measures (as required in the BAAQMD rule) and require root cause analysis and corrective action for PRD releases from all PRD subject to the work practice standard. While we recognize that if a PRD opens for a short period of time, the release might be below the release thresholds in the SCAQMD rules, we believe the release may be indicative of an important issue or design flaw. Because the potential for large emissions exist from the PRD subject to the work practice standard, we think it is reasonable to require a root cause analysis be conducted and appropriate corrective action implemented to potentially identify this issue and prevent a second release which, if the issue remains uncorrected, could be significant.

Requiring that prevention measures be implemented on all PRD subject to the work practice standard and not establishing a release threshold for release events is a variation from the SCAQMD rule. However, we also considered the allowable release frequency. We believe that our adoption of this approach is balanced by our not adopting the SCAQMD provisions requiring that PRD be vented to a flare or other control system or that refiners pay a fee if there are multiple releases of a certain size within a specified timeframe.¹² In place of this system, we are limiting the number of events from each PRD that can occur in a 3 year time period (2, if root causes are different), and in place of a fine, or routing to control, stating that the 3rd release in 3 years for any root cause is a deviation of the standard.

Because we are not including a size threshold for release events as in the SCAQMD rule, it is natural to assume release events would occur more frequently than release events subject to the SCAQMD rules. Also, based on our Monte Carlo analysis of random rare events, we note that it is quite likely to have two or three events in a 5-year period when a long time horizon (*e.g.*, 20 years) is considered. Therefore, considering our analysis of emergency

flaring events and the lack of a 500 lb/day release threshold, we considered it reasonable to use a 3-year period rather than a 5-year period as the basis of a deviation of the work practice standard.

The SCAQMD work practice standards do not apply to releases that are demonstrated to “result from natural disasters, acts of war or terrorism, or external power curtailment beyond the refinery’s control, excluding power curtailment due to an interruptible service agreement.” These types of events, which we are referring to as “*force majeure*” events, are beyond the control of the refinery owner or operator. We are providing that these events should not be included in the event count, but that they would be subject to the root cause analysis in order to confirm whether the release was caused by a *force majeure* event.

Consistent with the requirements in the SCAQMD rule, we are requiring refinery owners or operators to conduct a root cause analysis for a PRD release event. If the root cause was due to operator error or negligence, then the release would be a deviation of the standard. For any other release (not including those caused by *force majeure* events), the owner or operator would have to implement corrective action. We consider that a second release due to the same root cause for the same equipment in a 3-year period would be a deviation of the work practice standard. This provision will help ensure that root cause/corrective action are conducted effectively. Finally, a third release in a 3-year period (not including those caused by *force majeure* events) would be a deviation of the work practice standard, regardless of the root cause. While we are using a 3-year interval rather than the 5-year interval provided in the SCAQMD, we consider that the requirements as included in this final rule (*i.e.*, the inclusion of prevention measure requirements and no thresholds for release events) will achieve equivalent if not greater emissions reductions than the SCAQMD rule. We also consider that, given the prevention measure requirements and a 3-year period, there is less likelihood of unusual random events that happen over a short period of time that may cause refinery owners or operators to feel compelled to vent the PRD to a flare to eliminate concerns regarding potential non-compliance. Thus, we project that the requirements that we have included in the final rule will achieve emissions reductions commensurate to or exceeding the requirements in the SCAQMD rule (that serves as the MACT floor for existing sources) but will achieve those

¹² The SCAQMD rule requires PRD to be vented to a flare or other control device if there is a single release in excess of 2,000 pounds of VOC in a 24-hour period or three releases in excess of 500 pounds of VOC in a 5-year period or, alternatively, pay a \$350,000 fee. Thus, the SCAQMD rule would allow, for example, two releases of over 500 pounds of VOC each within a 5-year period without any penalty provided a third event did not occur. If a third event did occur, the refinery owner or operator would then have to vent the PRD to a flare or other control system or pay a fee (\$350,000) for the third release over 500 pounds of VOC.

reductions in a more cost-effective manner.

We also considered requiring all PRD to be vented through a closed vent system to a control device as an alternative beyond-the-MACT floor requirement. While this requirement would provide additional emission reductions beyond those we are establishing as the MACT floor, these reduction come at significant costs. Capital costs for requiring control of all atmospheric PRD is estimated to be approximately \$300 million compared to \$11 million for the requirements described above. The total annualized cost for requiring control of all atmospheric PRD is estimated to be approximately \$41 million/year compared to \$3.3 million/year for the requirements described above. We estimate that the incremental cost-effectiveness of requiring control of all atmospheric PRD compared to the requirements described above exceeds \$1 million per ton of HAP reduced. Consequently, we conclude that this is not a cost-effective option for existing sources.

The final requirements that we have developed for PRD achieve equal or greater emission reductions than those achieved by the SCAQMD rule (MACT floor). To the extent those requirements are more stringent than the SCAQMD, they are cost-effective. We could not identify an alternative requirement that provided further emission reductions in a cost-effective manner. Thus, we conclude that the work practice standards described above represent MACT for existing sources.

The BAAQMD rule, which represents the requirements applicable to the best performing sources, is the basis for new source MACT for PRD. Based on the specific provisions for PRD in the BAAQMD rule, we conclude that the MACT floor requirement is to have all PRD in HAP service associated with a new affected source vented through a closed vent system to a control device. As with existing sources, the PRD WPS would also contain the same exclusions (e.g., heavy liquid service PRDs, thermal expansion valves, liquid PRDs that are hard-piped to controlled drains, PRD with release pressures of less than 2.5 psig, PRD with emission potential of less than 72 lbs/day, and PRD on mobile equipment). These provisions are similar to the applicability provisions of the BAAQMD rule. Thus, we retain the same applicability of the work practice standard for PRDs on new or existing equipment, but all affected PRD on a new source would be required to be controlled. This is essentially equivalent to the proposed requirement of no

atmospheric releases. We could not identify a control option more stringent than the BAAQMD rule as applied to new sources. Therefore, we conclude that venting all PRD in HAP service through a closed vent system to a flare or similar control system is MACT for PRD associated with new affected sources.

We consider it appropriate to establish a work practice standard for PRD as provided in CAA section 112(h). While it may be possible to design and construct a conveyance for PRD releases, we consider that the application of a measurement methodology for PRDs is not practicable due to technological and economic limitations. First, it is not practicable to use a measurement methodology for PRD releases. The venting time can be very short and may vary widely in composition and flow rate. The often-short duration of an event makes it infeasible to collect a grab sample of the gases when a release occurs, and a single grab sample would not account for potential variation in vent gas composition. It would be economically prohibitive to construct an appropriate conveyance and install and operate continuous monitoring systems for each individual PRD in order to attempt to quantitatively measure a release event that may occur only a few times in a 3-year period. Additionally, we have not identified an available, technically feasible continuous emission monitoring systems that can determine a mass VOC or HAP release quantity accurately given the flow, composition and composition variability of potential PRD releases from refineries. Consequently, we conclude that it is appropriate to establish a work practice standard for PRD releases as provided in CAA section 112(h).

D. NESHAP Amendments Addressing Emissions During Periods of SSM

1. What amendments did we propose to address emissions during periods of SSM?

We proposed to eliminate the SSM exemption in 40 CFR part 63, subparts CC and UUU. Consistent with *Sierra Club v. EPA*, we proposed standards in these rules that apply at all times. We also proposed several revisions to Table 6 of subpart CC of 40 CFR part 63 and to Table 44 to subpart UUU of 40 CFR part 63 (the General Provisions Applicability tables for each subpart), including eliminating the incorporation of the General Provisions' requirement that the source develop an SSM plan, and eliminating and revising certain recordkeeping and reporting

requirements related to the SSM exemption.

For Refinery MACT 1, we proposed that the use of a bypass at any time to divert a Group 1 miscellaneous process vent to the atmosphere is a deviation of the emission standard, and specified that refiners install, maintain and operate a continuous parameter monitoring system (CPMS) for flow that is capable of recording the volume of gas that bypasses the APCD.

We also proposed to revise the definition of MPV to remove the exclusion for "Episodic or non-routine releases such as those associated with startup, shutdown, malfunction, maintenance, depressuring and catalyst transfer operations." We also proposed that the control requirements for Group 1 MPV apply at all times, including startup and shutdowns.

For Refinery MACT 2, we proposed alternate standards for three emission sources for periods of startup or shutdown. We proposed PM standards for startup of FCCU controlled with an ESP under Refinery MACT 2 because of safety concerns associated with operating an ESP during an FCCU startup. For FCCU controlled by an ESP, we proposed a 30-percent opacity limit (on a 6-minute rolling average basis) during the period that torch oil is used during FCCU startup. For startup of FCCU without a post-combustion device under Refinery MACT 2, we proposed a CO standard based on an excess oxygen concentration of 1 volume percent (dry basis) based on a 1-hour average. For periods of SRU shutdown, we proposed to allow diverting the SRU purge gases to a flare meeting the design and operating requirements in 40 CFR 63.670 (or, for a limited transitional time period, 40 CFR 63.11) or to a thermal oxidizer operated at a minimum temperature of 1,200 °F and a minimum outlet oxygen concentration of 2 volume percent (dry basis). For other emission sources in Refinery MACT 2, we proposed that the requirements that apply during normal operations should apply during startup and shutdown.

2. How did the SSM provisions change since proposal?

a. Refinery MACT 1

We proposed that when process equipment is opened to the atmosphere (e.g., for maintenance), the existing MPV emissions limits apply. In this final rule, we are instead finalizing startup and shutdown provisions that apply to these venting events. These startup and shutdown provisions are work practice standards that allow refinery owners or operators to open process equipment

during startup and shutdown provided that the equipment is drained and purged to a closed system until the hydrocarbon content is less than or equal to 10-percent of the LEL. For those situations where 10-percent LEL cannot be demonstrated (no direct measurement location), the equipment may be opened and vented to the atmosphere if the pressure is less than or equal to 5 psig. Active purging of the equipment is only allowed after the 10-percent LEL level is achieved, regardless of the pressure of the equipment/vessel. We are establishing a separate requirement for very small process equipment, defined as equipment where it is physically impossible to release more than 72 lbs VOC per equipment opening based on the size and contents of the equipment. This definition is consistent with the Group 1 applicability cutoff for control of miscellaneous process vents. We also developed requirements specific to catalyst changeout activities where pyrophoric catalyst (e.g., hydrotreater or hydrocracker catalysts) must be purged using recovered hydrogen. These provisions include: Documenting the procedures for equipment openings and procedures for verifying that events meet the specific conditions above using site procedures used to de-inventory equipment for safety purposes (i.e., hot work or vessel entry procedures) and documenting any deviations from the work practice standard requirements.

b. Refinery MACT 2

We are expanding the proposed 1-percent minimum oxygen operating limit alternative for organic HAP to apply for all FCCU startup and shutdown events (rather than only partial burn FCCU with CO boilers during startup). We are replacing the proposed opacity limit alternative to the metal HAP standard with a minimum cyclone face velocity limit and we are extending that alternative limit to all FCCU (regardless of control device) for both startup and shutdown in this final rule.

We are extending the proposed alternative for SRU to monitor incinerator temperature and excess oxygen limits during SRU shutdowns to also apply during periods of startup.

3. What key comments did we receive on the SSM revisions and what are our responses?

a. Refinery MACT 1

Comment: Many commenters stated that the proposed extension of the MPV definition to episodic maintenance startup and shutdown vents and

elimination of the SSM exception for storage tanks would create hundreds or thousands of new vents per refinery per year and generate massive on-going burdens. The commenters argued that the EPA has not included in the record any analysis of the potential environmental benefits, costs or operational and compliance feasibility and impacts associated with this requirement and that many of these requirements will result in delayed and extended equipment and process outages. One commenter asserted that the EPA has articulated no justification for applying emission standards to these events, nor any analysis consistent with CAA section 112 for a determination that MACT standards are appropriately applied to these emission events under the criteria in CAA section 112(d).

Many commenters stated that every time a vessel is opened for inspection or maintenance each vent point will have to be evaluated as a potential MPV or storage tank vent. If a particular vent point (e.g., bleeder) used for maintenance, startup or shutdown handles material that is initially greater than 20 ppm HAP, then it is a MPV. If there is a potential to emit greater than or equal 72 lbs/day of VOC, then it is a Group 1 MPV and must be controlled. If there is a potential of less than 72 lb/day VOC release, then it is a Group 2 MPV and subject to recordkeeping requirements. Commenters stated that in a refinery there would be tens or more such activities per day associated with normal maintenance and inspection; during turnarounds, there could be hundreds of such MPVs. Commenters added that these MPVs may then need to be individually accounted for and permitted creating an unnecessary permitting and recordkeeping burden for these periodic emissions.

Commenters recommended a general set of work practice requirements for maintenance, startup and shutdown of vents, based on state requirements, that do not impose the permitting, notice and evaluation requirements associated with identifying these vents individually. Commenters explained that states have dealt with these episodic vents by establishing them as a special class of process vent with limited recordkeeping requirements and subject to a work practice standard, rather than the normal MPV requirements. A key element of these work practices is clear identification of the criteria for releasing these vents to the atmosphere and for routing these vents to control after hydrocarbon is reintroduced, which the commenters asserted the current rule does not provide. Commenters proposed that a

work practice standard could include removing process liquids to the extent practical and depressuring smaller volume equipment until a pressure of <5 psig is achieved and/or purging and depressuring to a control device until the vent has a hydrocarbon concentration of less than 10-percent of the LEL. The commenters suggested that these standards should provide clear easily monitored criteria for when this equipment can be vented to the atmosphere, and should not impose the permitting, notice and evaluation requirements associated with identifying these vents as individual MPVs. One commenter provided draft regulatory language for a work practice requirement.

Response: We proposed to eliminate the episodic and non-routine emission exclusion in order to ensure that the MACT includes emission limits that apply at all times consistent with the holding in *Sierra Club*. At the time of the proposal, we expected that essentially all SSM event emissions would be routed to flares that are subject to the MACT standards and, thus, would serve to control these emissions. However, we recognize that maintenance activities that require equipment openings are a separate class of startup/shutdown emissions because there must be a point in time when the vessel can be opened and any emissions vented to the atmosphere. We acknowledge that it would require a significant effort to identify and characterize each of these potential release points for permitting purposes.

In considering these comments and whether we should establish a separate limit that would apply to these equipment openings, we reviewed state permit requirements and the practices employed by the best performing sources. We found that some state or local agencies required depressuring to 5 psig prior to atmospheric releases while others required the gases to have organic concentrations at or below 10-percent of LEL prior to atmospheric venting. In the final rule, we are establishing a requirement that prior to opening process equipment to the atmosphere, the equipment must first be drained and purged to a closed system so that the hydrocarbon content is less than or equal to 10-percent of the LEL. For those situations where 10-percent LEL cannot be demonstrated, the equipment may be opened and vented to the atmosphere if the pressure is less than or equal to 5 psig, provided there is no active purging of the equipment to the atmosphere until the LEL criterion is met. For equipment where it is not technically possible to depressurize to a

control system, we allow venting to the atmosphere where there is no more than 72 lbs VOC per day potential, consistent with our Group 1 applicability cutoff for control of process vents. For catalyst changeout activities where hydrotreater pyrophoric catalyst must be purged we have provided limited allowances for direct venting. Provisions to demonstrate compliance with this work practice include documenting the procedures for equipment openings and procedures for verifying that events meet the specific conditions above using site procedures used to de-inventory equipment for safety purposes (*i.e.*, hot work or vessel entry procedures).

b. Refinery MACT 2

Comment: Several commenters noted that there was a proposed specific alternative metal HAP/PM standard for startup of an FCCU controlled with an ESP, but took issue with the fact that no alternative PM limits were proposed for startup of FCCU equipped with other types of PM controls, or for any FCCU during periods of shutdown or hot standby. Regarding the proposed alternative for startup, which would provide an alternative in the form of an opacity limit when torch oil is in use, commenters stated that there are serious process safety concerns which prevent most FCCU ESPs from being operated when torch oil is in the regenerator, that is, during periods of startup, shutdown and hot standby. To avoid the possibility of a fire and explosion, the commenters claimed ESPs are usually de-energized and bypassed during these periods and, consequently, these FCCUs are generally unable to meet the proposed 30-percent opacity limit.

Several commenters stated that the EPA's limits on FCCU opacity during SSM are unreasonable and ignore the technical requirements for transitional operations of those units. The commenters indicated that they have ESPs located downstream of the CO boiler and claimed that for safety reasons the CO boiler cannot operate during startup, shutdown or hot standby. Further, a commenter indicated that the ESP cannot operate if the CO boiler is not operating and thus both the CO boiler and the ESP must be bypassed during startup, shutdown, and hot standby operations.

Another commenter stated that the EPA offers no data to support the achievability of this requirement in practice and discusses information for 26 startup/shutdown events that found that none complied with a 30-percent opacity requirement. Several commenters also noted that experience has shown that the 30-percent opacity

limit is unachievable during these periods for FCCUs controlled with tertiary cyclones, when regenerator gas flow is below cyclone minimum design flow.

Several commenters suggested that the EPA establish a standard based on the operation of FCCU catalyst regenerators' internal cyclones that function to retain the catalyst in the regenerators and thereby minimize catalyst and metal HAP emissions from the regenerators. Additional control to meet the Refinery MACT 2 emission limit of not more than 1.0 lb PM/1,000 lbs coke burn-off is provided by a bag house, wet gas scrubber (WGS), ESP or tertiary (external) cyclone. The efficiency of a cyclone is a function of the inlet gas velocity. Assuring adequate velocity to the internal cyclones ensures that the catalyst sent to these additional controls is minimized and ensures that they are operating as effectively as possible. Similarly, even if the FCCU cannot meet the normal opacity limits during startup, shutdown or hot standby (*e.g.* due to the ESP being off-line for safety reasons or the tertiary cyclones or WGS operating at non-routine conditions), assuring adequate velocity to the internal regenerator cyclones will control and minimize particulate emissions. Several commenters stated support for another commenter's position that all FCCUs should be allowed the option of complying with a 20 feet/second minimum inlet velocity to the primary regenerator cyclones during periods of startup and shutdown, including hot standby, and these commenters provided additional technical explanations in their comments.

On the other hand, some commenters seemed to support the proposed opacity limits, but suggested minor revisions. One commenter noted that the SCAQMD has granted Valero's request for variances from visible emission standards during startup of the FCCU of up to 65-percent opacity for up to five minutes, in aggregate, during any 1-hour period, and 30-percent as an hourly average for the remaining period, during startup events. The application of this variance reflects the unavailability and/or ineffectiveness of the ESP during the startup condition. Another commenter recommended that either the opacity standard should be raised or the time period for averaging should be extended so FCCUs can be operated safely during SSM events and still remain in compliance.

Response: We have reviewed the data submitted by the commenters to support their assertion that the 30-percent opacity limit (determined on a 6-minute

average basis) is not achievable during startup and shutdown events. While the data are limited, and it is unclear if the data provided are indicative of the performance achieved by the best performing sources, we do not have adequate data to refute the assertion that the 30-percent opacity limit (determined on a 6-minute average basis) is not achievable during startup and shutdown events. We considered the two options suggested by the commenters, the minimum velocity for the internal FCCU regenerator cyclones and the 30-percent hourly average opacity limit excluding 5 minutes not exceeding 65-percent opacity. Again, due to the limited data available during startup and shutdown events, we are not able to determine which requirement would provide greater HAP emissions reduction. However, we note that some facilities may not be required to have an opacity monitoring system in place and opacity monitoring is not applicable for FCCU controlled with wet scrubbers. Therefore, we find that the minimum internal cyclone inlet velocity requirement is more broadly applicable than the opacity limit. Also, based on the data provided by the commenters, the minimum internal cyclone inlet velocity requirement will provide PM (and therefore metal HAP) emissions reductions during startup and shutdown periods. Therefore, considering the available data, we conclude that MACT for FCCU startup and shutdown events is maintaining the minimum internal cyclone inlet velocity of 20 feet/second.

Comment: Several commenters stated that the EPA should provide alternate standards for startups of FCCU equipped with CO boilers and for any FCCU during periods of shutdown and hot standby. The commenters stated that the EPA incorrectly assumes that refiners are able to safely and reliably start up their FCCU with flue gas boilers in service and meet the normal operating limit of 500 ppm CO. They claimed that most refiners are unable to reliably start up their FCCU with flue gas boilers in service due to the design of the boiler and the fact that many boilers are not able to safely and reliably handle the transient FCCU operations that can occur during startup, shutdown, and hot standby. One commenter stated that FCCU built with CO boilers experience issues with flame stability due to fluctuating flue gas compositions and rates when starting up and shutting down. Accordingly, the commenter stated, startup and shutdown activities at FCCU using a boiler as an APCD are not currently meeting the Refinery MACT 2 standard

of 500 ppm CO on a 1-hour basis, and this level of control does not qualify as the MACT floor. The commenter gave examples of facilities where FCCU, including those equipped with post-combustion control systems, do not consistently demonstrate compliance with a 500 ppm CO concentration standard during all startup and shutdown events.

Commenters stated that reliable boiler operation is critical to the overall refinery steam system and refineries must avoid jeopardizing boiler operation to prevent major upsets of process operations. A major upset or site-wide shutdown could result in flaring and emissions of HAP far in excess of that emitted while bypassing the CO boiler.

Commenters stated that combustion of torch oil in the FCCU regenerator during startup is one of the primary reasons the CO limit cannot be met during these operations. Torch oil is also used during shutdown to control the cooling rate (and potential equipment damage) and during hot standby and, thus, the normal CO standard cannot be met at these times either. Hot standby is used to hold an FCCU regenerator at operating temperature for outages where a regenerator shutdown is not needed and to avoid full FCCU shutdowns. Full cold shutdown also increases personnel exposures associated with removing catalyst and securing equipment. Additionally, this can produce additional emissions over maintaining the unit in hot standby. Commenters claimed that because of the variability of CO during torch oil operations, it is not possible for the EPA to establish a CAA section 112(d) standard for startup and shutdown activities at FCCU because refineries cannot measure a constant level of emissions reductions.

The commenters recommended expansion of the proposed standard of greater than 1-percent hourly average excess regenerator oxygen to all FCCU, including units with fired boilers. These commenters suggested that maintaining an adequate level of excess oxygen for the combustion of fuel in the regenerator is the best way to minimize CO and organic HAP emissions from FCCU during these periods.

Response: After reviewing the comments and discussing CO boiler operations with facility operators, we agree that the 1-percent minimum oxygen limit should be more broadly applicable to FCCU startup and shutdown regardless of the control device configuration and have revised the final rule accordingly.

Comment: Several commenters stated that the proposed alternative standards

for SRP shutdowns should be extended to startups as well since the normal SRP emission limitation cannot always be achieved during SRP startups. Several commenters gave examples of startup activities where this relief is needed, and noted there may be other startup activities that also need this relief.

Response: For the control of sulfur HAP, we determined that incineration effectively controls these HAP. We were not aware that there would be unusual sulfur loads in the SRU tail gas during startup. We agree that the alternative standard we proposed for periods of shutdown is also the MACT floor for periods of startup because incineration meeting the limits proposed will achieve the MACT control requirements for sulfur HAP during periods of either startup or shutdown even though sulfur loadings during these periods may be elevated. For many SRU configurations, compliance during normal operations is demonstrated by monitoring SO₂ emissions. However, during startup and shutdown, high sulfur loadings in the SRU tail gas entering the incinerator will cause high SO₂ emissions even though sulfur HAP emissions are well controlled. Consequently, the proposed incinerator operating limits provide a better indication of sulfur HAP control during startup and shutdown than SO₂ emissions. Owners or operators that use incinerators or thermal oxidizers during normal operations may meet the site-specific temperature and excess oxygen operating limits that were determined based on their performance test during periods of startup and shutdown.

4. What is the rationale for our final approach and final decisions to address emissions during periods of SSM?

a. Refinery MACT 1

We did not receive comments regarding the proposed amendments to Table 6 of subpart CC of 40 CFR part 63; therefore, for the reasons provided in the preamble to the proposed rule, we finalizing these amendments as proposed.

We determined that it was overly burdensome and in most cases technically infeasible to consider every potential equipment or vessel opening and classify these “openings” (newly classified as MPV in the proposal) as either Group 1 or Group 2 MPV. We also determined that it is not always technically feasible, depending on the opening, to demonstrate compliance with the MPV emissions limitations. After considering the public comments, we determined it was appropriate to establish separate startup and shutdown provisions for MPV associated with

process equipment openings. We reviewed state and local requirements and based the final rule requirements on the emissions limitations required to be followed by the best performing sources. Therefore, we are finalizing requirements for refinery owners or operators to open process equipment during these startup and shutdown events without directly permitting these “vents” as Group 1 or Group 2 MPV provided that the equipment is drained and purged to a closed system until the hydrocarbon content is less than or equal to 10-percent of the LEL. As described in further detail previously in this section, we have provided provisions for special cases where the 10-percent LEL limit cannot be demonstrated and provisions for less significant equipment openings, consistent with the practices used by the best performing facilities.

b. Refinery MACT 2

We did not receive significant comments regarding the proposed amendments to Table 44 to subpart UUU of 40 CFR part 63; therefore, we finalizing these amendments as proposed.

In response to comments, we determined that the limited provisions that were provided for startup only or for shutdown only were too limited and we have expanded the proposed provisions to both startup and shutdown regardless of control device used. For the FCCU organic HAP emissions limit, we are finalizing an alternative limit for periods of startup of no less than 1-percent oxygen in the exhaust gas as proposed, but we are extending that alternative limit to shutdown and to all FCCU in this final rule.

For the FCCU metal HAP emissions limit, we proposed a specific startup limit for FCCU controlled by an ESP of 30-percent opacity. We received comments along with limited data suggesting that this limit was not achievable. Commenters suggested that the best performing units maintain a minimum face velocity of at least 20 feet/second to minimize catalyst PM losses during startup and shutdowns. Operators of wet scrubbers also noted that they cannot maintain pressure drops and that one cannot meet the PM emissions limit normalized by coke burn-off rate when the coke burn-off rate approaches zero. Consequently, commenters stated that the alternative limits should be provided for startup and shutdown regardless of control device. Upon reconsideration of the comments, we determined that it was necessary to revise the proposed

alternative to be based on minimum inlet face velocity to the FCCU regenerator internal cyclones and provide the alternative for both startup and shutdown. We also expanded this limit to all FCCU; however, we also required FCCU with wet scrubbers to meet only the liquid to gas ratio operating limit during periods of startup and shutdown to allow wet scrubbers to use a consistent compliance method at all times.

For SRU, we are finalizing an alternative standard during periods of startup and shutdown to use a flare that meets the operating limits included in the final rule or a thermal oxidizer or incinerator operated at a minimum hourly average temperature of 1,200 °F and a minimum hourly average outlet oxygen concentration of 2 volume percent (dry basis). We proposed these alternatives for periods of shutdown only, but based on comments received regarding startup issues, we determined that high sulfur loadings can occur during periods of startup and that the alternative limit proposed was appropriate for both startup and shutdown.

E. Technical Amendments to Refinery MACT 1 and 2

1. What other amendments did we propose for Refinery MACT 1 and 2?

We proposed a number of amendments to Refinery MACT 1 and 2 to address technical issues such as rule language clarifications and reference corrections. First, we proposed to amend Refinery MACT 1 to clarify what is meant by “seal” for open-ended valves and lines that are “sealed” by the cap, blind flange, plug, or second valve by stating that sealed means when there are no detectable emissions from the open-ended valve or line at or above an instrument reading of 500 ppm. Second, we also proposed electronic reporting requirements where owners or operators of petroleum refineries must submit electronic copies of required performance test and performance evaluation reports for compliance with Refinery MACT 1 and 2 by direct computer-to-computer electronic transfer using EPA-provided software. Third, we proposed to update the General Provisions Tables 6 (for Refinery MACT 1) and 44 (for Refinery MACT 2) to correct cross references and to incorporate additional sections of the General Provisions that are necessary to implement these rules.

2. How did the other amendments for Refinery MACT 1 and 2 change since proposal?

We are not finalizing the definition of “seal” for open-ended lines as proposed. We are finalizing changes to update the General Provisions cross-reference tables as proposed, with one minor change to provide an option for the administrator to issue guidance on performance test reporting timeframes in order to address issues relating to submittal of data to the ERT.

3. What key comments did we receive on the other amendments for Refinery MACT 1 and 2 and what are our responses?

Comment: Numerous commenters objected to the proposal to clarify the meaning of “seal” as it relates to open-ended line (OEL) standards. Commenters contend that there is no basis for the EPA to assert that the proposed definition merely “clarifies” an established interpretation of the term “seal” and stated that the proposed revision constitutes an illegal change in the requirements for OELs, and the clarification should not be finalized.

One commenter stated that none of the MACT standards in place before this proposal have stated or suggested that a “sealed” OEL is one with detectable emissions below 500 ppm. This commenter added this unique interpretation of the requirement to “seal” an OEL with a cap or plug is incompatible with the historical interpretation of this requirement by affected facilities and by the EPA, and the EPA has not issued any sort of definitive guidance or interpretation setting out this position. The commenter detailed numerous references to considerations the EPA has made relative to OEL requirements in LDAR programs. In addition to the examples cited, the commenter noted that in 2006, the EPA proposed to add a “no detectable emissions” limit and monitoring requirement for OELs to NSPS VV (71 FR 65317, November 7, 2006). Two commenters noted that the proposed monitoring was not finalized in either NSPS VV or VVa (72 FR 64860, November 16, 2007) because it was not considered BDT due to the low emission reductions and the cost effectiveness of the requirement. Another commenter agreed that there is no explanation provided for why this information could now support the need for a new OEL seal standard that requires monitoring to ensure compliance when it was deemed to be unjustified previously.

In addition, the commenter collected OEL monitoring data and submitted it to

the EPA (see Docket Item No. EPA-HQ-OAR-2010-0869-0058). Based on these data, the commenter asserted that the existence of leaks from OELs that are not properly sealed is extremely low.

The commenter noted that the EPA is claiming this change is only a clarification of current requirements, allowing the EPA to bypass the need to cite a CAA authorization for this change to the existing CAA section 112(d)(2) standard or meet the process requirements associated with such a change, including providing emission reduction, cost and burden estimates in the record and the associated PRA Information Collection Request (ICR).

Several commenters claimed that this clarification would result in retroactive impact and also addressed the implication of the proposed change on other fugitive emissions standards. One commenter stated that the EPA cannot retroactively reinterpret the OEL requirements or define the word “seal” and added that the EPA should account for the thousands of additional monitoring events per year per refinery that this new requirement would add to LDAR programs and provide proper cost justification under CAA sections 112(d)(6) or 112(f)(2).

Several commenters also stated that the proposed definition will effectively change all equipment leak rules in parts 40 CFR parts 60, 61 and 63 and the change should not be finalized. One commenter added that by claiming this change is only a clarification of current requirements, the EPA would set a precedent applicable to all OELs in all industries subject to any similar OEL equipment leak requirement.

Response: We have decided not to finalize the proposed clarification of the term “seal” for OELs at this time. The fenceline monitoring requirements we are finalizing will detect any significant leaks from a cap, blind flange, plug or second valve that does not properly seal an OEL, as well as significant leaks from numerous other types of fugitive emission sources.

Comment: A few commenters stated that the proposed use of the ERT is not appropriate because the costs and burdens imposed are additive to the costs of producing and submitting the written report, and there is no benefit that justifies the additional cost. One commenter also stated that the EPA has not developed or articulated a reasonable approach to using information that would be uploaded to the ERT. The commenters recommended that the EPA remove this portion of the proposal until the ERT is demonstrated to handle all the information from refinery performance

tests (rather than only portions), thereby eliminating the need for both written and electronic reporting and until the Agency demonstrates that it is using the electronic data to develop improved air quality emission factors.

Other commenters stated that the ERT requirement does not supersede or replace any state reporting requirements and thus the regulated industry will be subject to dual reporting requirements. These commenters disagreed with the preamble claim that eliminating the recordkeeping requirements for performance test reports is a burden savings, and stated that it may duplicate burdens already borne by the regulated community.

The commenters expressed further concern that duplicative reporting requirements will strain the regulated industry to comply with deadlines established by rule for report submittals. One commenter stated that there is no mechanism for obtaining extensions for special circumstances. Under proposed 40 CFR 63.655(h)(9)(i), all reports are due in 60 days. The commenter claimed that by not referencing reporting requirements to the General Provisions in 40 CFR 63.10(d)(2), there is no allowance for obtaining additional time due to unforeseen circumstances or due to the difficulties involved with completing particularly complex reports.

One commenter stated that the primary performance test method (Method 18) required for determining compliance is not currently included in the list of methods supported by the ERT. The commenter stated that the regulated community's experience with Method 18 is that it is a very broad methodology and can be exceptionally complex to execute and to report. The commenter stated that the EPA is aware that Method 18 reporting is complex, that it may be difficult to incorporate into the ERT, and that no time schedule has been defined for development or implementation for this method.

The commenter also stated that without formal notice of changes to the ERT, the regulated community is at risk of non-compliance. The only way for the regulated community to know that changes have occurred in the ERT is to monitor the Web site directly because the EPA does not formally announce changes to the ERT in the **Federal Register**. As such, it would be possible for a regulated entity to be unaware of changes made such as the incorporation of Method 18. The commenter expressed concern that the proposal language is an open-ended commitment subject to change without notice. The commenter stated that the EPA should

clearly indicate when facilities would be required to use the ERT when new test methods are included in the ERT.

Response: We disagree that use of the ERT for completing stack test reports is an added cost and burden. While the requirement to report the results of stack tests with the ERT does not supersede state reporting requirements, we are aware of several states that already require the use of the ERT, and we are aware of more states that are considering requiring its use. We note that where states will not accept an electronic ERT submittal, the ERT provides an option to print the report, and the printed report can be mailed to the state agency. We have no reason to believe that the time savings in the ability to reuse data elements within reports does not, at a minimum, offset the cost incurred by printing out and mailing a copy of the report and the commenters have provided no support for their cost claims.

Furthermore, based on the analysis performed for the Electronic Reporting and Recordkeeping Requirements for the New Source Performance Standards Rulemaking (ERRRNSPS) (80 FR 15100), electronic reporting results in an overall cost savings to industry when annualized over a 20-year period. The cost savings is achieved through means such as standardization of data, embedded quality assurance checks, automatic calculation routines and reduced data entry through the ability to reuse data in files instead of starting from scratch with each test. As outlined in the ERRRNSPS, there are many benefits to electronic reporting. These benefits span all users of the data—the EPA, state and local regulators, the regulated entities and the public. We note that in the preamble to this proposed rule we provided a number of reasons why the use of the ERT will provide benefit going forward and that most of the benefits we outlined were longer-term benefits (e.g., reducing burden of future information collection requests). Additionally, we note that in 2011, in response to Executive Order 13563, the EPA developed a plan¹³ to periodically review its regulations to determine if they should be modified, streamlined, expanded or repealed in an effort to make regulations more effective and less burdensome. The plan includes replacing outdated paper reporting with electronic reporting. In keeping with this plan and the White House's Digital

Government Strategy,¹⁴ in 2013 the EPA issued an agency-wide policy specifying that new regulations will require reports to be electronic to the maximum extent possible. By requiring electronic submission of stack test reports in this rule, we are taking steps to implement this policy. We also disagree that we have not developed or articulated a reasonable approach to using information that would be uploaded to the ERT. To the contrary, we have discussed at length our plans for the use of stack test data collected via the ERT. In 2009, we published an advanced notice of proposed rulemaking (74 FR 52723) for the Emissions Factors Program Improvements. In that notice, we first outlined our intended approach for revising our emissions factors development procedures. This approach included using stack test data collected with the ERT. We reiterated this position in our "Recommended Procedures for the Development of Emissions Factors and Use of the WebFIRE Database" (<http://www.epa.gov/ttn/chief/efpac/procedures/procedures81213.pdf>), which was subject to public notice and comment before being finalized in 2013. Finally, we discussed uses of these data in the preamble to the proposed rule and at length in the preamble to the ERRRNSPS.

We think that it is a circular argument to say that the agency should eliminate the use of the ERT until it demonstrates that it is using the electronic data. It would be impossible for the agency to use data that it does not have. We can only use electronic data once we have electronic data. We do note that we are nearing completion of programming the WebFIRE database with our new emissions factor development procedures and anticipate running the routines on existing data sets in the near future.

We continue to improve and upgrade the ERT on an ongoing basis. The current version of the ERT supports 41 methods, including EPA Methods 1–4, 5, 5B, 5F, 25A 26, and 26A. We note that the ERT does not currently support EPA Method 18, and for performance tests using Method 18, the source will still have to produce a paper report. However, we are aware of the need to add Method 18 to the ERT, and we are currently looking at developing this capability. As noted in the ERRRNSPS, when new methods are added to the

¹³ EPA's "Final Plan for Periodic Retrospective Reviews," August 2011. Available at: <http://www.epa.gov/regdart/retrospective/documents/eparetroreviewplan-aug2011.pdf>.

¹⁴ Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: <https://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digital-government-strategy.pdf>.

ERT, we will not only post them to the Web site; we will also send out a listserv notice to the Clearinghouse for Inventories and Emissions Factors (CHIEF) listserv. Information on joining the CHIEF listserv can be found at <http://www.epa.gov/ttn/chief/listserv.html#chief>. We are requiring the use of the ERT if the method is supported by the ERT, as listed on the ERT Web site (http://www.epa.gov/ttn/chief/ert/ert_info.html) at the time of the test. We do not agree that it is overly burdensome to check a Web site for updates prior to conducting a performance test.

We did revise the MACT 1 and 2 tables referencing reporting requirements to the general provisions (Table 6 for Refinery MACT 1 and Table 44 for Refinery MACT 2) to provide flexibility in the 60-day reporting timeline to accommodate unforeseen circumstances or difficulties involved with completing particularly complex reports.

4. What is the rationale for our final approach and final decisions for the other amendments for Refinery MACT 1 and 2?

We are not finalizing the definition of seal, as proposed. The fenceline monitoring work practice standard will detect any significant leaks from a cap, blind flange, plug or second valve that does not properly seal an OEL, as well as significant leaks from numerous other types of fugitive emission sources.

We are finalizing requirements for electronic reporting, as proposed, with a minor clarification. Specifically, we are revising Tables 6 in subpart CC and 44 in subpart UUU, which cross-reference the applicable provisions in the General Provisions to provide flexibility in the ERT 60-day reporting timeline. Refiners can seek approval from the EPA or a delegated state additional time for submittal of data due to unforeseen circumstances or due to the difficulties involved with completing particularly complex reports.

F. Technical Amendments to Refinery NSPS Subparts J and Ja

1. What amendments did we propose for Refinery NSPS Subparts J and Ja?

We proposed a number of amendments to Refinery NSPS subparts J and Ja to address reconsideration issues and minor technical clarifications. First, we proposed revisions to 40 CFR 60.100a(b) to include a provision that sources subject to Refinery NSPS subpart J could elect to comply instead with the provisions of Refinery NSPS subpart Ja.

Second, we proposed a series of amendments to the requirements for SRP in 40 CFR 60.102a, to clarify the applicable emission limits for different types of SRP based on whether oxygen enrichment is used. The amendments proposed also clarified that emissions averaging across a group of emission points within a given SRP is allowed for each of the different types of SRP, and that emissions averaging is specific to the SO₂ or reduced sulfur standards (and not to the 10 ppmv hydrogen sulfide (H₂S) limit). We also proposed a series of corresponding amendments in 40 CFR 60.106a to clarify the monitoring requirements, particularly when oxygen enrichment or emissions averaging is used. We also proposed clarifications in 40 CFR 60.106a to consistently use the term “reduced sulfur compounds” when referring to the emission limits and monitoring devices needed to comply with the reduced sulfur compound emission limits for sulfur recovery plants with reduction control systems not followed by incineration.

Third, we proposed amendments to 40 CFR 60.102a(g)(1) to clarify that CO boilers, while part of the FCCU affected facility, can also be FGCD.

Fourth, we proposed several revisions to 40 CFR 60.104a to clarify the performance testing requirements. We proposed revision to 40 CFR 60.104a(a) to clarify that an initial compliance demonstration is needed for the H₂S concentration limit in 40 CFR 60.103a(h). We proposed revisions to the annual PM testing requirement in 40 CFR 60.104a(b) to clarify that annually means once per calendar year, with an interval of at least 8 months but no more than 16 months between annual tests. We also proposed to amend 40 CFR 60.104a(f) to clarify that the provisions of that paragraph are specific to owners or operators of an FCCU or FCU that use a cyclone to comply with the PM emissions limit in 40 CFR 60.102a(b)(1) and not to facilities electing to comply with the PM emissions limit using a PM CEMS. We also proposed to amend 40 CFR 60.104a(j) to delete the requirements to measure flow for the H₂S concentration limit for fuel gas.

Fifth, we proposed several amendments to clarify the requirements for control device operating parameters in 40 CFR 60.105a. Specifically, we proposed amendments to 40 CFR 60.105a(b)(1)(ii)(A) to require corrective action be completed to repair faulty (leaking or plugged) air or water lines within 12 hours of identification of an abnormal pressure reading during the daily checks. We also proposed revisions to 40 CFR 60.105a(i) to specify that periods when abnormal pressure

readings for a jet ejector-type wet scrubber (or other type of wet scrubber equipped with atomizing spray nozzles) are not corrected within 12 hours of identification and periods when a bag leak detection system alarm (for a fabric filter) is not alleviated within the time period specified in the rule are considered to be periods of excess emissions.

We also proposed amendments to 40 CFR 60.105(b)(1)(iv) and 60.107a(b)(1)(iv) to provide flexibility in span range to accommodate different manufacturers of the length-of-stain tubes. We also proposed to delete the last sentence in 40 CFR 60.105(b)(3)(iii).

Finally, we proposed clarification to the performance test requirements for the H₂S concentration limit for affected flares in 40 CFR 60.107a(e)(1)(ii) and (e)(2)(ii) to remove the distinction between flares with or without routine flow.

2. How did the amendments to Refinery NSPS Subparts J and Ja change since proposal?

We are making very few changes to the amendments proposed for Refinery NSPS subparts J and Ja. In response to comments, we are revising the NSPS requirements to replace the “measurement sensitivity” requirements with accuracy requirements consistent with those used in Refinery MACT 1 and 2. Specifically, we are revising 40 CFR 60.106a(a)(6)(i)(B) and (7)(i)(B) to require use of a flow sensor meeting an accuracy requirement of ±5-percent over the normal range of flow measured or 10-cubic-feet-per-minute, whichever is greater. We are also revising the flare accuracy requirements in 40 CFR 60.107a(f)(1)(ii) to require use of a flow sensor meeting an accuracy requirement of ±20-percent of the flow rate at velocities ranging from 0.1 to 1 feet per second and an accuracy of ±5-percent of the flow rate for velocities greater than 1-feet-per-second.

Finally, we are revising 40 CFR 60.101a(b) to correct an inadvertent error where the phrase “and delayed coking units” was not included in the proposed sentence revision.

3. What key comments did we receive on the amendments to Refinery NSPS Subparts J and Ja and what are our responses?

Comment: Two commenters noted concern with the term “measurement sensitivity” in proposed 40 CFR 60.106a(a)(6)(i)(B) and (a)(7)(i)(B) for sulfur recovery unit monitoring alternatives and in existing regulations 40 CFR 60.107a(f)(1)(ii) for flares because “sensitivity” is not a term

found on typical monitoring system data sheets. Typical flow meter characteristics include terms such as accuracy and resolution and the commenters requested that the EPA revise the terminology to match the wording found in 40 CFR part 63, subpart CC, Table 13 for flow meters (*i.e.*, accuracy requirements). Additionally, several commenters suggested that the EPA flow monitor accuracy specifications are inconsistent with those in the SCAQMD Flare Rule and many refinery consent decrees. The commenters recommended revising both the flare flow meter sensitivity specification and accuracy specification in Refinery MACT 1 Table 13 and in Refinery NSPS subpart Ja to be consistent with the accuracy specification from the Shell Deer Park Consent Decree, Appendix 1.10, which specifies the required flare flow meter accuracy as “ $\pm 20\%$ of reading over the velocity range of 0.1–1 feet per second (ft/s) and $\pm 5\%$ of reading over the velocity range of 1–250 ft/s.”

Response: We proposed the term “measurement sensitivity” in proposed 40 CFR 60.106a(a)(6)(i)(B) and (a)(7)(i)(B) to be internally consistent within Refinery NSPS subpart Ja [*i.e.*, consistent with the existing language in § 60.107a(f)(1)(ii)]. However, we agree with the commenters that this term may be unclear. This term is not defined in Refinery NSPS subpart Ja and it is not commonly used in the flow monitoring system’s technical specification sheets. Therefore, to be consistent with the terminology used by instrument vendors and used in Refinery MACT 1 and 2, we are revising these sections to replace the term “measurement sensitivity” with “accuracy.” We are also revising the flow rate accuracy provisions specific for flares to provide an accuracy requirement of $\pm 20\%$ over the velocity range of 0.1–1 ft/s and $\pm 5\%$ for velocities exceeding 1 ft/s in 40 CFR 60.107a(f)(1)(ii) and in Table 13 of subpart CC. We are providing this provision specifically for flares because they commonly operate at high turndown ratios. For other flow measurements, we are retaining the 10-cubic-foot-per-minute accuracy requirement. We are also clarifying that the $\pm 5\%$ accuracy requirement for the SRU alternatives apply to the “the normal range of flow measured”

consistent with the requirements in Refinery MACT 1 and 2.

Comment: One commenter stated that in the proposed revisions to 40 CFR 60.100a, (79 FR 36956), the EPA proposes to remove the phrase “and delayed coker units” from 40 CFR 60.100a(b). However, we state the compliance date for both flares and delayed coker units separately in the same paragraph. The commenter believes the EPA should explain the reason for and implications of the removal of this phrase.

Response: The removal of the phrase “and delayed coking units” from the first sentence in 40 CFR 60.100a(b) was an inadvertent error. The only revision that we intended to make in 40 CFR 60.100a was to allow owners or operators subject to subpart J to elect to comply with the requirements in subpart Ja. In the final amendments, we have included the phrase “and delayed coking units” in the first sentence in 40 CFR 60.100a(b).

4. What is the rationale for our final approach and final decisions for the amendments to Refinery NSPS Subparts J and Ja?

We are finalizing amendments for Refinery NSPS subparts J and Ja as proposed with minor revisions. In response to comments, we are revising the “measurement sensitivity” requirements to be an “accuracy” requirement. This change will make the requirements more clear and consistent between the flow meter requirements in the NSPS and the MACT standards since the same flow meter will be subject to each of these requirements. We are also providing a dual accuracy requirement for flare flow meters. This accuracy requirement is necessary because flares, which can have large diameters to accommodate high flows, are commonly operated at low flow rates. Together, this makes it technically infeasible for many flares to meet the lower flow 10 cfm accuracy requirement. Therefore, we are providing specific accuracy requirements for flares of $\pm 20\%$ over the velocity range of 0.1–1 ft/s and $\pm 5\%$ for velocities exceeding 1 ft/s, consistent with recent consent decrees and equipment vendor specifications.

Finally, we are revising the introductory phrase in the first sentence

in 40 CFR 60.101a(b) to read “Except for flares and delayed coking units . . .” to correct an inadvertent error. We intended to revise this sentence only to include the proposed provision to allow sources subject to Refinery NSPS subpart J to comply with Refinery NSPS subpart Ja. The redline text posted on our Web site showed no revisions to this introductory phrase, but the amendatory text did not include the words “and delayed coking units” in this phrase. This was an inadvertent error, which we are correcting in the final rule.

V. Summary of Cost, Environmental and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities, the air quality impacts and cost impacts?

The sources affected by significant amendments to the petroleum refinery standards include flares, storage vessels, pressure relief devices, fugitive emissions and DCU. The amendments for other sources subject to one or more of the petroleum refinery standards are expected to have minimal air quality and cost impacts.

The total capital investment cost of the final amendments and standards is estimated at \$283 million, \$112 million from the final amendments for storage vessels, DCU and fenceline monitoring and \$171 million from standards to ensure compliance. We estimate annualized costs of the final amendments for storage vessels, DCU and fenceline monitoring to be approximately \$13.0 million, which includes an estimated \$11.0 million for recovery of lost product and the annualized cost of capital. We also estimated annualized costs of the final standards to ensure compliance to be approximately \$50.2 million. The final amendments for storage vessels, DCU and fenceline monitoring would achieve a nationwide HAP emission reduction of 1,323 tpy, with a concurrent reduction in VOC emissions of 16,660 tpy and a reduction in methane emissions of 8,700 metric tonnes per year. Table 2 of this preamble summarizes the cost and emission reduction impacts of the final amendments, and Table 3 of this preamble summarizes the costs of the final standards to ensure compliance.

TABLE 2—NATIONWIDE IMPACTS OF FINAL AMENDMENTS (2010\$)

Affected source	Total capital investment (million \$)	Total annualized cost without credit (million \$/yr)	Product recovery credit (million \$/yr)	Total annualized costs (million \$/yr)	Methane emission reductions (metric tpy)	VOC emission reductions (tpy)	Cost effective-ness (\$/ton VOC)	HAP emission reductions (tpy)	Cost effective-ness (\$/ton HAP)
Storage Vessels	18.5	3.13	(8.16)	(5.03)	.....	14,600	(345)	910	(5,530)
Delayed Coking Units	81	14.5	(2.80)	11.7	8,700	2,060	5,680	413	28,330
Fugitive Emissions (Fenceline Monitoring)	12.5	6.36	.....	6.36	.....	.....	.....	.....	.....
Total	112	24.0	(11.0)	13.0	8,700	16,660	780	1,323	9,830

TABLE 3—NATIONWIDE COSTS OF FINAL AMENDMENTS TO ENSURE COMPLIANCE (2010\$)

Affected Source	Total capital investment (million \$)	Total annualized cost without credit (million \$/yr)	Product recovery credit (million \$/yr)	Total annualized costs (million \$/yr)
Relief Device Monitoring	11.1	3.3	.....	3.3
Flare Monitoring	160	46.5	.....	46.5
FCCU Testing .....	.....	0.4	.....	0.4
Total	171	50.2	.....	50.2

The impacts shown in Table 2 do not include costs, product recovery credits, or emissions reductions associated with any root cause analysis or corrective action taken in response to the final amendments for fenceline monitoring. The impacts shown in Table 3 do not include (i) the costs or emissions reductions associated with any root cause analysis and corrective action taken in response to the final source performance testing at the FCCUs, or (ii) emissions reductions associated with corrective action taken in response to pressure relief device or (iii) emissions reductions associated with the flare operating and monitoring provisions. The operational and monitoring requirements for flares at refineries have the potential to reduce excess emissions from flares by up to approximately 3,900 tpy of HAP and 33,000 tpy of VOC. The operational and monitoring requirements for flares also have the potential to reduce methane emissions by 25,800 metric tonnes per year while increasing emissions of carbon dioxide (CO₂) and nitrous oxide by 267,000 metric tonnes per year and 2 metric tonnes per year, respectively, yielding a net reduction in GHG emissions of 377,000 metric tonnes per year of CO₂ equivalents (CO₂e).

B. What are the economic impacts?

We performed a national economic impact analysis for petroleum product producers. All petroleum product refiners will incur annual compliance costs of less than 1-percent of their sales. For all firms, the minimum cost-to-sales ratio is <0.01-percent; the

maximum cost-to-sales ratio is 0.87-percent; and the mean cost-to-sales ratio is 0.03-percent. Therefore, the overall economic impact of this proposed rule should be minimal for the refining industry and its consumers.

In addition, the EPA performed a screening analysis for impacts on small businesses by comparing estimated annualized engineering compliance costs at the firm-level to firm sales. The screening analysis found that the ratio of compliance cost to firm revenue falls below 1-percent for the 28 small companies likely to be affected by the proposal. For small firms, the minimum cost-to-sales ratio is <0.01-percent; the maximum cost-to-sales ratio is 0.62-percent; and the mean cost-to-sales ratio is 0.07-percent.

More information and details of this analysis is provided in the technical document “Economic Impact Analysis for Petroleum Refineries Proposed Amendments to the National Emissions Standards for Hazardous Air Pollutants”, which is available in the docket for this rule (Docket ID No. EPA–HQ–OAR–2010–0682).

C. What are the benefits?

The final rule is anticipated to result in a reduction of 1,323 tpy of HAP (based on allowable emissions under the MACT standards) and 16,660 tpy of VOC, not including potential emission reductions that may occur as a result of the operating and monitoring requirements for flares and fugitive emission sources via fenceline monitoring. These avoided emissions will result in improvements in air

quality and reduced negative health effects associated with exposure to air pollution of these emissions; however, we have not quantified or monetized the benefits of reducing these emissions for this rulemaking.

D. Impacts of This Rulemaking on Environmental Justice Populations

To examine the potential impacts on vulnerable populations (minority, low-income and indigenous communities) that might be associated with the Petroleum Refinery source categories addressed in this final rule, we evaluated the percentages of various social, demographic and economic groups in the at-risk populations living near the facilities where these sources are located and compared them to national averages. Our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups including the African American, Other and Multiracial, Hispanic, Below the Poverty Level, and Over 25 without a High School Diploma when compared to the nationwide percentages of those groups. These groups will benefit the most from the emission reductions achieved by this final rulemaking, which is projected to result in 1 million fewer people exposed to risks greater than 1-in-1 million.

Additionally, these communities will benefit from this rulemaking, as this rulemaking for the first time ever requires fenceline monitoring, and reporting of fenceline data. The agency during the pre-proposal period and

during the comment period received feedback from communities on the importance of having fenceline monitoring in their communities and the importance of communities having access to this data. The EPA believes that vulnerable communities will benefit from this data and the requirements that EPA has put in place in this rulemaking to manage fugitive emissions.

E. Impacts of This Rulemaking on Children's Health

Under Executive Order 13045 the EPA must evaluate the effects of the planned regulation on children's health and safety. This action's health and risk assessments are contained in section IV.A of this preamble. We believe we have adequately estimated risk for children, and we do not believe that the environmental health risks addressed by this action present a disproportionate risk to children. When the EPA derives exposure reference concentrations and unit risk estimates (URE) for HAP, it also considers the most sensitive populations identified (*i.e.*, children) in the available literature, and importantly, these are the values used in our risk assessments. With regard to children's potentially greater susceptibility to non-cancer toxicants, the assessments rely on the EPA (or comparable) hazard identification and dose-response values which have been developed to be protective for all subgroups of the general population, including children. With respect to cancer, the EPA uses the age-dependent adjustment factor approach, and applies these factors to carcinogenic pollutants that are known to act via mutagenic mode of action. Further details are provided in the "Final Residual Risk Assessment for the Petroleum Refining Source Sector", Docket ID No. EPA-HQ-OAR-2010-0682.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, "Economic Impact Analysis: Petroleum Refineries—Final Amendments to the National Emissions

Standards for Hazardous Air Pollutants and New Source Performance Standards" is available in Docket ID Number EPA-HQ-OAR-2010-0682.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et se. The information collection requirements are not enforceable until OMB approves them.

Adequate recordkeeping and reporting are necessary to ensure compliance with these standards as required by the CAA. The ICR information collected from recordkeeping and reporting requirements is also used for prioritizing inspections and is of sufficient quality to be used as evidence in court.

The ICR document prepared by the EPA for the amendments to the Petroleum Refinery MACT standards for 40 CFR part 63, subpart CC has been assigned the EPA ICR number 1692.08. Burden changes associated with these amendments would result from new monitoring, recordkeeping and reporting requirements. The estimated annual increase in recordkeeping and reporting burden hours is 99,722 hours; the frequency of response is quarterly and semiannual for reports for all respondents that must comply with the rule's reporting requirements; and the estimated average number of likely respondents per year is 95 (this is the average in the second year). The cost burden to respondents resulting from the collection of information includes the total capital cost annualized over the equipment's expected useful life (about \$18 million, which includes monitoring equipment for fenceline monitoring, pressure relief devices, and flares), a total operation and maintenance component (about \$21 million per year for fenceline and flare monitoring), and a labor cost component (about \$8.3 million per year, the cost of the additional 99,722 labor hours). Burden is defined at 5 CFR 1320.3(b).

The ICR document prepared by the EPA for the amendments to the Petroleum Refinery MACT standards for 40 CFR part 63, subpart UU has been assigned the EPA ICR number 1844.06. Burden changes associated with these amendments would result from new testing, recordkeeping and reporting requirements being finalized with this action. The estimated average burden per response is 25 hours; the frequency of response ranges from annually up to every 5 years for respondents that have

FCCU, and the estimated average number of likely respondents per year is 67. The cost burden to respondents resulting from the collection of information includes the performance testing costs (approximately \$778,000 per year over the first 3 years for the initial PM and one-time HCN performance tests and \$235,000 per year starting in the fourth year), and a labor cost component (approximately \$410,000 per year for 4,940 additional labor hours). Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE) under the RFA. The small entities subject to the requirements of this action are small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business in the petroleum refining industry having 1,500 or fewer employees (Small Business Administration (SBA), 2011); (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. Details of this analysis are presented in the economic impact analysis which can be found in the docket for this rule (Docket ID No. EPA-HQ-OAR-2010-0682).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. As discussed earlier in this preamble, these amendments result in nationwide costs of \$63.2 million per year for the private sector. Additionally, the rule contains no requirements that apply to small

governments and does not 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.

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

This action does not have tribal implications, as specified in Executive Order 13175. The final amendments impose no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of the proposed rule and specifically solicited comment on the proposed amendments from tribal officials.

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

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in section IV.A of this preamble.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The overall economic impact of this final rule should be minimal for the refining industry and its consumers.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. Therefore, the EPA conducted searches for the Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and

searched their databases. We conducted searches for EPA Methods 18, 22, 320, 325A, and 325B of 40 CFR parts 60 and 63, appendix A. No applicable VCS were identified for EPA Method 22.

The following voluntary consensus standards were identified as acceptable alternatives to the EPA test methods for the purpose of this rule.

The voluntary consensus standard ISO 16017-2:2003(E) "Air quality—Sampling and analysis of volatile organic compounds in ambient air, indoor air and workplace air by sorbent tube/thermal desorption/capillary gas chromatography. Part 2: Diffusive sampling" is an acceptable alternative to Method 325A, Sections 1.2, 6.1 and 6.5 and Method 325B Sections 1.3, 7.1.2, 7.1.3, 7.1.4, 12.2.4, 13.0, A.1.1, and A.2. This voluntary consensus standard gives general guidance for the sampling and analysis of volatile organic compounds in air. It is applicable to indoor, ambient and workplace air. This standard is available at International Organization for Standardization, ISO Central Secretariat, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland. See <https://www.iso.org>.

The voluntary consensus standard BS EN 14662-4:2005 "Ambient Air Quality: Standard Method for the Measurement of Benzene Concentrations—Part 4: Diffusive Sampling Followed By Thermal Desorption and Gas Chromatography" is an acceptable alternative to Method 325A, Section 1.2 and Method 325B, Sections 1.3, 7.1.3, 7.1.4, 12.2.4, 13.0, A.1.1, and A.2. This voluntary consensus standard gives general guidance for the sampling and analysis of benzene in air by diffusive sampling, thermal desorption and capillary gas chromatography. This standard is available the European Committee for Standardization, Avenue Marnix 17—B-1000 Brussels. See <https://www.cen.eu>.

The voluntary consensus standard ASTM D6420-99 (2010) "Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry" is an acceptable alternative to EPA Method 18. This voluntary consensus standard employs a direct interface gas chromatography/mass spectrometer (GCMS) to identify and quantify a list of 36 volatile organic compounds (the compounds are listed in the method).

The voluntary consensus standard ASTM D6196-03 (Reapproved 2009) "Standard Practice for Selection of Sorbents, Sampling, and Thermal Desorption Analysis Procedures for Volatile Organic Compounds in Air" is an acceptable alternative to Method 325A, Sections 1.2 and 6.1, and Method

325B, Sections 1.3, 7.1.2, 7.1.3, 7.1.4, 13.0, A.1.1, and A.2. This voluntary consensus standard is intended to assist in the selection of sorbents and procedures for the sampling and analysis of ambient, indoor, and workplace atmospheres for a variety of common volatile organic compounds.

The voluntary consensus standards ASTM D1945-03 and later revision ASTM D1945-14 "Standard Test Method for Analysis of Natural Gas by Gas Chromatography" are acceptable for natural gas analysis. This voluntary consensus standard covers the determination of the chemical composition of natural gases and similar gaseous mixtures. This test method may be abbreviated for the analysis of lean natural gases containing negligible amounts of hexanes and higher hydrocarbons, or for the determination of one or more components, as required.

The voluntary consensus standard ASTM UOP539-12 "Refinery Gas Analysis by GC" is acceptable for refinery gas analysis. This voluntary consensus standard is for determining the composition of refinery gas streams or vaporized liquefied petroleum gas using a preconfigured, commercially available gas chromatograph.

The voluntary consensus standard ASTM D6348-03 (Reapproved 2010) including Annexes A1 through A8, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy" is an acceptable alternative to EPA Method 320. This voluntary consensus standard is a field test method that employs an extractive sampling system to direct stationary source effluent to an FTIR spectrometer for the identification and quantification of gaseous compounds. This field test method provides near real time analysis of extracted gas samples from stationary sources.

The voluntary consensus standard ASTM D6348-12e1 "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy" is an acceptable alternative to EPA Method 320 with the following two caveats: (1) The test plan preparation and implementation in the Annexes to ASTM D 6348-03 (Reapproved 2010), Sections A1 through A8 are mandatory; and (2) In ASTM D6348-03 (Reapproved 2010) 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 70% ≥ R ≤ 130%. 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:

$$\text{Reported Result} = (\text{Measured Concentration in the Stack} \times 100) / \% R.$$

This voluntary consensus standard is a field test method that employs an extractive sampling system to direct stationary source effluent to an FTIR spectrometer for the identification and quantification of gaseous compounds. This field test method provides near real time analysis of extracted gas samples from stationary sources.

The EPA solicited comments on VCS and invited the public to identify potentially-applicable VCS; however, we did not receive comments regarding this aspect of 40 CFR part 60, subparts J and Ja, and part 63, subparts CC, UUU, and Y. Under 40 CFR 63.7(f) and 63.8(f), a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in this final rule.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629; February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the U.S. The EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. The EPA has this goal for all communities and persons by working to ensure that everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a

healthy environment in which to live, learn and work.

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. As discussed in section V.D. of this preamble, the EPA conducted an analysis of the characteristics of the population with greater than 1-in-1 million risk living within 50 km of the 142 refineries affected by this rulemaking and determined that there are more African-Americans, Other and multiracial groups, Hispanics, low-income individuals, individuals with less than a high school diploma compared to national averages. Therefore, these populations are expected to experience the benefits of the risk reductions associated with this rule. The results of this evaluation are contained in two technical reports, "Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Petroleum Refineries", available in the docket for this action (See Docket ID Nos. EPA-HQ-OAR-2010-0682-0226 and -0227). Additionally, a discussion of the final risk analysis is included in Sections IV.A and V.D of this preamble.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it maintains or increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low-income or indigenous populations. Further, the EPA believes that implementation of this rule will provide an ample margin of safety to protect public health of all demographic groups.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 29, 2015.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart J—Standards of Performance for Petroleum Refineries

■ 2. Section 60.105 is amended by revising paragraphs (b)(1)(iv) and (b)(3)(iii) to read as follows:

§ 60.105 Monitoring of emissions and operations.

* * * * *

(b) * * *

(1) * * *

(iv) The supporting test results from sampling the requested fuel gas stream/system demonstrating that the sulfur content is less than 5 ppmv. Sampling data must include, at minimum, 2 weeks of daily monitoring (14 grab samples) for frequently operated fuel gas streams/systems; for infrequently operated fuel gas streams/systems, seven grab samples must be collected unless other additional information would support reduced sampling. The owner or operator shall use detector tubes ("length-of-stain tube" type measurement) following the "Gas Processors Association Standard 2377-86 (incorporated by reference—see § 60.17), using tubes with a maximum span between 10 and 40 ppmv inclusive when $1 \leq N \leq 10$, where N = number of pump strokes, to test the applicant fuel gas stream for H₂S; and

* * * * *

(3) * * *

(iii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application and the owner or operator chooses not to submit new information to support an exemption, the owner or operator must begin H₂S monitoring using daily stain sampling to demonstrate compliance using length-of

stain tubes with a maximum span between 200 and 400 ppmv inclusive when $1 \leq N \leq 5$, where N = number of pump strokes. The owner or operator must begin monitoring according to the requirements in paragraph (a)(1) or (2) of this section as soon as practicable but in no case later than 180 days after the operation change. During daily stain tube sampling, a daily sample exceeding 162 ppmv is an exceedance of the 3-hour H₂S concentration limit.

* * * * *

Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

■ 3. Section 60.100a is amended by revising the first sentence of paragraph (b) to read as follows:

§ 60.100a Applicability, designation of affected facility, and reconstruction.

* * * * *

(b) Except for flares and delayed coking units, the provisions of this subpart apply only to affected facilities under paragraph (a) of this section which either commence construction, modification or reconstruction after May 14, 2007, or elect to comply with the provisions of this subpart in lieu of complying with the provisions in subpart J of this part. * * *

* * * * *

■ 4. Section 60.101a is amended by:

■ a. Revising the definition of “Corrective action”; and

■ b. Adding, in alphabetical order, a definition for “Sour water”.

The revision and addition read as follows:

§ 60.101a Definitions.

* * * * *

Corrective action means the design, operation and maintenance changes that one takes consistent with good engineering practice to reduce or eliminate the likelihood of the recurrence of the primary cause and any other contributing cause(s) of an event identified by a root cause analysis as having resulted in a discharge of gases from an affected facility in excess of specified thresholds.

* * * * *

Sour water means water that contains sulfur compounds (usually H₂S) at concentrations of 10 parts per million by weight or more.

* * * * *

■ 5. Section 60.102a is amended by revising paragraphs (b)(1)(i) and (iii), (f), and (g)(1) introductory text to read as follows:

§ 60.102a Emissions limitations.

* * * * *

(b) * * *

(1) * * *

(i) 1.0 gram per kilogram (g/kg) (1 pound (lb) per 1,000 lb) coke burn-off or, if a PM continuous emission monitoring system (CEMS) is used, 0.040 grain per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air for each modified or reconstructed FCCU.

* * * * *

(iii) 1.0 g/kg (1 lb/1,000 lb) coke burn-off or, if a PM CEMS is used, 0.040 grain per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air for each affected FCU.

* * * * *

(f) Except as provided in paragraph (f)(3) of this section, each owner or operator of an affected sulfur recovery plant shall comply with the applicable emission limits in paragraph (f)(1) or (2) of this section.

(1) For a sulfur recovery plant with a design production capacity greater than 20 long tons per day (LTD), the owner or operator shall comply with the applicable emission limit in paragraph (f)(1)(i) or (ii) of this section. If the sulfur recovery plant consists of multiple process trains or release points, the owner or operator shall comply with the applicable emission limit for each process train or release point individually or comply with the applicable emission limit in paragraph (f)(1)(i) or (ii) as a flow rate weighted average for a group of release points from the sulfur recovery plant provided that flow is monitored as specified in § 60.106a(a)(7); if flow is not monitored as specified in § 60.106a(a)(7), the owner or operator shall comply with the applicable emission limit in paragraph (f)(1)(i) or (ii) for each process train or release point individually. For a sulfur recovery plant with a design production capacity greater than 20 long LTD and a reduction control system not followed by incineration, the owner or operator shall also comply with the H₂S emission limit in paragraph (f)(1)(iii) of this section for each individual release point.

(i) For a sulfur recovery plant with an oxidation control system or a reduction control system followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere (SO₂) in excess of the emission limit calculated using Equation 1 of this section. For Claus units that use only ambient air in the Claus burner or that elect not to monitor O₂ concentration of the air/oxygen mixture used in the Claus burner or for non-Claus sulfur recovery plants, this SO₂ emissions limit is 250 ppmv (dry basis) at zero percent excess air.

$$E_{LS} = k_1 \times (-0.038 \times (\%O_2)^2 + 11.53 \times \%O_2 + 25.6) \quad (\text{Eq. 1})$$

Where:

E_{LS} = Emission limit for large sulfur recovery plant, ppmv (as SO₂, dry basis at zero percent excess air);

k₁ = Constant factor for emission limit conversion: k₁ = 1 for converting to the SO₂ limit for a sulfur recovery plant with an oxidation control system or a reduction control system followed by incineration and k₁ = 1.2 for converting to the reduced sulfur compounds limit for a sulfur recovery plant with a reduction control system not followed by incineration; and

%O₂ = O₂ concentration of the air/oxygen mixture supplied to the Claus burner, percent by volume (dry basis). If only

ambient air is used for the Claus burner or if the owner or operator elects not to monitor O₂ concentration of the air/oxygen mixture used in the Claus burner or for non-Claus sulfur recovery plants, use 20.9% for %O₂.

(ii) For a sulfur recovery plant with a reduction control system not followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere containing reduced sulfur compounds in excess of the emission limit calculated using Equation 1 of this section. For Claus units that use only

ambient air in the Claus burner or for non-Claus sulfur recovery plants, this reduced sulfur compounds emission limit is 300 ppmv calculated as ppmv SO₂ (dry basis) at 0-percent excess air.

(iii) For a sulfur recovery plant with a reduction control system not followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere containing hydrogen sulfide (H₂S) in excess of 10 ppmv calculated as ppmv SO₂ (dry basis) at zero percent excess air.

(2) For a sulfur recovery plant with a design production capacity of 20 LTD or less, the owner or operator shall comply with the applicable emission limit in paragraph (f)(2)(i) or (ii) of this section. If the sulfur recovery plant consists of multiple process trains or release points, the owner or operator may comply with the applicable emission limit for each process train or release point individually or comply with the applicable emission limit in paragraph (f)(2)(i) or (ii) as a flow rate weighted average for a group of release points from the sulfur recovery plant provided that flow is monitored as specified in

§ 60.106a(a)(7); if flow is not monitored as specified in § 60.106a(a)(7), the owner or operator shall comply with the applicable emission limit in paragraph (f)(2)(i) or (ii) for each process train or release point individually. For a sulfur recovery plant with a design production capacity of 20 LTD or less and a reduction control system not followed by incineration, the owner or operator shall also comply with the H₂S emission limit in paragraph (f)(2)(iii) of this section for each individual release point.

(i) For a sulfur recovery plant with an oxidation control system or a reduction

control system followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere containing SO₂ in excess of the emission limit calculated using Equation 2 of this section. For Claus units that use only ambient air in the Claus burner or that elect not to monitor O₂ concentration of the air/oxygen mixture used in the Claus burner or for non-Claus sulfur recovery plants, this SO₂ emission limit is 2,500 ppmv (dry basis) at zero percent excess air.

$$E_{SS} = k_1 \times (-0.38 \times (\%O_2)^2 + 115.3 \times \%O_2 + 256) \quad (\text{Eq. 2})$$

Where:

E_{SS} = Emission limit for small sulfur recovery plant, ppmv (as SO₂, dry basis at zero percent excess air);

k₁ = Constant factor for emission limit conversion: k₁ = 1 for converting to the SO₂ limit for a sulfur recovery plant with an oxidation control system or a reduction control system followed by incineration and k₁ = 1.2 for converting to the reduced sulfur compounds limit for a sulfur recovery plant with a reduction control system not followed by incineration; and

%O₂ = O₂ concentration of the air/oxygen mixture supplied to the Claus burner, percent by volume (dry basis). If only ambient air is used in the Claus burner or if the owner or operator elects not to monitor O₂ concentration of the air/oxygen mixture used in the Claus burner or for non-Claus sulfur recovery plants, use 20.9% for %O₂.

(ii) For a sulfur recovery plant with a reduction control system not followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere containing reduced sulfur compounds in excess of the emission limit calculated using Equation 2 of this section. For Claus units that use only ambient air in the Claus burner or for non-Claus sulfur recovery plants, this reduced sulfur compounds emission limit is 3,000 ppmv calculated as ppmv SO₂ (dry basis) at zero percent excess air.

(iii) For a sulfur recovery plant with a reduction control system not followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere containing H₂S in excess of 100 ppmv calculated as ppmv SO₂ (dry basis) at zero percent excess air.

(3) The emission limits in paragraphs (f)(1) and (2) of this section shall not apply during periods of maintenance of

the sulfur pit, which shall not exceed 240 hours per year. The owner or operator must document the time periods during which the sulfur pit vents were not controlled and measures taken to minimize emissions during these periods. Examples of these measures include not adding fresh sulfur or shutting off vent fans.

(g) * * *

(1) Except as provided in (g)(1)(iii) of this section, for each fuel gas combustion device, the owner or operator shall comply with either the emission limit in paragraph (g)(1)(i) of this section or the fuel gas concentration limit in paragraph (g)(1)(ii) of this section. For CO boilers or furnaces that are part of a fluid catalytic cracking unit or fluid coking unit affected facility, the owner or operator shall comply with the fuel gas concentration limit in paragraph (g)(1)(ii) for all fuel gas streams combusted in these units.

* * * * *

■ 6. Section 60.104a is amended by:

■ a. Revising the first sentence of paragraph (a) and paragraphs (b), (f) introductory text, and (h) introductory text;

■ b. Adding paragraph (h)(6); and

■ c. Removing and reserving paragraphs (j)(1) through (3).

The revisions and additions read as follows:

§ 60.104a Performance tests.

(a) The owner or operator shall conduct a performance test for each FCCU, FCU, sulfur recovery plant and fuel gas combustion device to demonstrate initial compliance with each applicable emissions limit in § 60.102a and conduct a performance test for each flare to demonstrate initial compliance with the H₂S concentration

requirement in § 60.103a(h) according to the requirements of § 60.8. * * *

(b) The owner or operator of a FCCU or FCU that elects to monitor control device operating parameters according to the requirements in § 60.105a(b), to use bag leak detectors according to the requirements in § 60.105a(c), or to use COMS according to the requirements in § 60.105a(e) shall conduct a PM performance test at least annually (*i.e.*, once per calendar year, with an interval of at least 8 months but no more than 16 months between annual tests) and furnish the Administrator a written report of the results of each test.

* * * * *

(f) The owner or operator of an FCCU or FCU that uses cyclones to comply with the PM per coke burn-off emissions limit in § 60.102a(b)(1) shall establish a site-specific opacity operating limit according to the procedures in paragraphs (f)(1) through (3) of this section.

* * * * *

(h) The owner or operator shall determine compliance with the SO₂ emissions limits for sulfur recovery plants in § 60.102a(f)(1)(i) and (f)(2)(i) and the reduced sulfur compounds and H₂S emissions limits for sulfur recovery plants in § 60.102a(f)(1)(ii), (f)(1)(iii), (f)(2)(ii), and (f)(2)(iii) using the following methods and procedures:

* * * * *

(6) If oxygen or oxygen-enriched air is used in the Claus burner and either Equation 1 or 2 of this subpart is used to determine the applicable emissions limit, determine the average O₂ concentration of the air/oxygen mixture supplied to the Claus burner, in percent by volume (dry basis), for the performance test using all hourly average O₂ concentrations determined

during the test runs using the procedures in § 60.106a(a)(5) or (6).

- * * *
- 7. Section 60.105a is amended by:
 - a. Revising paragraphs (b)(1)(i), (b)(1)(ii)(A), (b)(2), (h)(1), (h)(3)(i), and (i)(1);
 - b. Redesignating paragraphs (i)(2) through (6) as (i)(3) through (7);
 - c. Adding paragraph (i)(2); and
 - d. Revising newly redesignated paragraph (i)(7).

The revisions and additions read as follows:

§ 60.105a Monitoring of emissions and operations for fluid catalytic cracking units (FCCU) and fluid coking units (FCU).

(b) * * *

(1) * * *

(i) For units controlled using an electrostatic precipitator, the owner or operator shall use CPMS to measure and record the hourly average total power input and secondary current to the entire system.

(ii) * * *

(A) As an alternative to pressure drop, the owner or operator of a jet ejector type wet scrubber or other type of wet scrubber equipped with atomizing spray nozzles must conduct a daily check of the air or water pressure to the spray nozzles and record the results of each check. Faulty (e.g., leaking or plugged) air or water lines must be repaired within 12 hours of identification of an abnormal pressure reading.

* * *

(2) For use in determining the coke burn-off rate for an FCCU or FCU, the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring the concentrations of CO₂, O₂ (dry basis), and if needed, CO in the exhaust gases prior to any control or energy recovery system that burns auxiliary fuels. A CO monitor is not required for determining coke burn-off rate when no auxiliary fuel is burned and a continuous CO monitor is not required in accordance with paragraph (h)(3) of this section.

(i) The owner or operator shall install, operate, and maintain each CO₂ and O₂ monitor according to Performance Specification 3 of appendix B to this part.

(ii) The owner or operator shall conduct performance evaluations of each CO₂ and O₂ monitor according to the requirements in § 60.13(c) and Performance Specification 3 of appendix B to this part. The owner or operator shall use Method 3 of appendix A-3 to this part for conducting the relative accuracy evaluations.

(iii) If a CO monitor is required, the owner or operator shall install, operate, and maintain each CO monitor according to Performance Specification 4 or 4A of appendix B to this part. If this CO monitor also serves to demonstrate compliance with the CO emissions limit in § 60.102a(b)(4), the span value for this instrument is 1,000 ppm; otherwise, the span value for this instrument should be set at approximately 2 times the typical CO concentration expected in the FCCU or FCU flue gas prior to any emission control or energy recovery system that burns auxiliary fuels.

(iv) If a CO monitor is required, the owner or operator shall conduct performance evaluations of each CO monitor according to the requirements in § 60.13(c) and Performance Specification 4 of appendix B to this part. The owner or operator shall use Method 10, 10A, or 10B of appendix A-3 to this part for conducting the relative accuracy evaluations.

(v) The owner or operator shall comply with the quality assurance requirements of procedure 1 of appendix F to this part, including quarterly accuracy determinations for CO₂ and CO monitors, annual accuracy determinations for O₂ monitors, and daily calibration drift tests.

* * *

(h) * * *

(1) The owner or operator shall install, operate, and maintain each CO monitor according to Performance Specification 4 or 4A of appendix B to this part. The span value for this instrument is 1,000 ppmv CO.

* * *

(3) * * *

(i) The demonstration shall consist of continuously monitoring CO emissions for 30 days using an instrument that meets the requirements of Performance Specification 4 or 4A of appendix B to this part. The span value shall be 100 ppmv CO instead of 1,000 ppmv, and the relative accuracy limit shall be 10 percent of the average CO emissions or 5 ppmv CO, whichever is greater. For instruments that are identical to Method 10 of appendix A-4 to this part and employ the sample conditioning system of Method 10A of appendix A-4 to this part, the alternative relative accuracy test procedure in section 10.1 of Performance Specification 2 of appendix B to this part may be used in place of the relative accuracy test.

* * *

(i) * * *

(1) If a CPMS is used according to paragraph (b)(1) of this section, all 3-hour periods during which the average PM control device operating

characteristics, as measured by the continuous monitoring systems under paragraph (b)(1), fall below the levels established during the performance test. If the alternative to pressure drop CPMS is used for the owner or operator of a jet ejector type wet scrubber or other type of wet scrubber equipped with atomizing spray nozzles, each day in which abnormal pressure readings are not corrected within 12 hours of identification.

(2) If a bag leak detection system is used according to paragraph (c) of this section, each day in which the cause of an alarm is not alleviated within the time period specified in paragraph (c)(3) of this section.

* * *

(7) All 1-hour periods during which the average CO concentration as measured by the CO continuous monitoring system under paragraph (h) of this section exceeds 500 ppmv or, if applicable, all 1-hour periods during which the average temperature and O₂ concentration as measured by the continuous monitoring systems under paragraph (h)(4) of this section fall below the operating limits established during the performance test.

■ 8. Section 60.106a is amended by:

- a. Revising paragraph (a)(1)(i);
- b. Adding paragraphs (a)(1)(iv) through (vii);
- c. Revising paragraphs (a)(2) introductory text, (a)(2)(i) and (ii), and the first sentence of paragraph (a)(2)(iii);
- d. Removing paragraphs (a)(2)(iv) and (v);
- e. Redesignating paragraphs (a)(2)(vi) through (ix) as (a)(2)(iv) through (vii);
- f. Revising the first sentence of paragraph (a)(3) introductory text and paragraph (a)(3)(i);
- g. Adding paragraphs (a)(4) through (7); and
- h. Revising paragraphs (b)(2) and (3).

The revisions and additions read as follows:

§ 60.106a Monitoring of emissions and operations for sulfur recovery plants.

(a) * * *

(1) * * *

(i) The span value for the SO₂ monitor is two times the applicable SO₂ emission limit at the highest O₂ concentration in the air/oxygen stream used in the Claus burner, if applicable.

* * *

(iv) The owner or operator shall install, operate, and maintain each O₂ monitor according to Performance Specification 3 of appendix B to this part.

(v) The span value for the O₂ monitor must be selected between 10 and 25 percent, inclusive.

(vi) The owner or operator shall conduct performance evaluations for the O₂ monitor according to the requirements of § 60.13(c) and Performance Specification 3 of appendix B to this part. The owner or operator shall use Methods 3, 3A, or 3B of appendix A–2 to this part for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981 (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of appendix A–2 to this part.

(vii) The owner or operator shall comply with the applicable quality assurance procedures of appendix F to this part for each monitor, including annual accuracy determinations for each O₂ monitor, and daily calibration drift determinations.

(2) For sulfur recovery plants that are subject to the reduced sulfur compounds emission limit in § 60.102a(f)(1)(ii) or (f)(2)(ii), the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of reduced sulfur compounds and O₂ emissions into the atmosphere. The reduced sulfur compounds emissions shall be calculated as SO₂ (dry basis, zero percent excess air).

(i) The span value for the reduced sulfur compounds monitor is two times the applicable reduced sulfur compounds emission limit as SO₂ at the highest O₂ concentration in the air/oxygen stream used in the Claus burner, if applicable.

(ii) The owner or operator shall install, operate, and maintain each reduced sulfur compounds CEMS according to Performance Specification 5 of appendix B to this part.

(iii) The owner or operator shall conduct performance evaluations of each reduced sulfur compounds monitor according to the requirements in § 60.13(c) and Performance Specification 5 of appendix B to this part. * * *

* * * * *

(3) In place of the reduced sulfur compounds monitor required in paragraph (a)(2) of this section, the owner or operator may install, calibrate, operate, and maintain an instrument using an air or O₂ dilution and oxidation system to convert any reduced sulfur to SO₂ for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of the total resultant SO₂. * * *

(i) The span value for this monitor is two times the applicable reduced sulfur

compounds emission limit as SO₂ at the highest O₂ concentration in the air/oxygen stream used in the Claus burner, if applicable.

* * * * *

(4) For sulfur recovery plants that are subject to the H₂S emission limit in § 60.102a(f)(1)(iii) or (f)(2)(iii), the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of H₂S, and O₂ emissions into the atmosphere. The H₂S emissions shall be calculated as SO₂ (dry basis, zero percent excess air).

(i) The span value for this monitor is two times the applicable H₂S emission limit.

(ii) The owner or operator shall install, operate, and maintain each H₂S CEMS according to Performance Specification 7 of appendix B to this part.

(iii) The owner or operator shall conduct performance evaluations for each H₂S monitor according to the requirements of § 60.13(c) and Performance Specification 7 of appendix B to this part. The owner or operator shall use Methods 11 or 15 of appendix A–5 to this part or Method 16 of appendix A–6 to this part for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981 (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of appendix A–5 to this part.

(iv) The owner or operator shall install, operate, and maintain each O₂ monitor according to Performance Specification 3 of appendix B to this part.

(v) The span value for the O₂ monitor must be selected between 10 and 25 percent, inclusive.

(vi) The owner or operator shall conduct performance evaluations for the O₂ monitor according to the requirements of § 60.13(c) and Performance Specification 3 of appendix B to this part. The owner or operator shall use Methods 3, 3A, or 3B of appendix A–2 to this part for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981 (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of appendix A–2 to this part.

(vii) The owner or operator shall comply with the applicable quality assurance procedures of appendix F to this part for each monitor, including annual accuracy determinations for each O₂ monitor, and daily calibration drift determinations.

(5) For sulfur recovery plants that use oxygen or oxygen enriched air in the

Claus burner and that elects to monitor O₂ concentration of the air/oxygen mixture supplied to the Claus burner, the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the O₂ concentration of the air/oxygen mixture supplied to the Claus burner in order to determine the allowable emissions limit.

(i) The owner or operator shall install, operate, and maintain each O₂ monitor according to Performance Specification 3 of appendix B to this part.

(ii) The span value for the O₂ monitor shall be 100 percent.

(iii) The owner or operator shall conduct performance evaluations for the O₂ monitor according to the requirements of § 60.13(c) and Performance Specification 3 of appendix B to this part. The owner or operator shall use Methods 3, 3A, or 3B of appendix A–2 to this part for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981 (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of appendix A–2 to this part.

(iv) The owner or operator shall comply with the applicable quality assurance procedures of appendix F to this part for each monitor, including annual accuracy determinations for each O₂ monitor, and daily calibration drift determinations.

(v) The owner or operator shall use the hourly average O₂ concentration from this monitor for use in Equation 1 or 2 of § 60.102a(f), as applicable, for each hour and determine the allowable emission limit as the arithmetic average of 12 contiguous 1-hour averages (*i.e.*, the rolling 12-hour average).

(6) As an alternative to the O₂ monitor required in paragraph (a)(5) of this section, the owner or operator may install, calibrate, operate, and maintain a CPMS to measure and record the volumetric gas flow rate of ambient air and oxygen-enriched gas supplied to the Claus burner and calculate the hourly average O₂ concentration of the air/oxygen mixture used in the Claus burner as specified in paragraphs (a)(6)(i) through (iv) of this section in order to determine the allowable emissions limit as specified in paragraphs (a)(6)(v) of this section.

(i) The owner or operator shall install, calibrate, operate and maintain each flow monitor according to the manufacturer's procedures and specifications and the following requirements.

(A) Locate the monitor in a position that provides a representative measurement of the total gas flow rate.

(B) Use a flow sensor meeting an accuracy requirement of ± 5 percent over the normal range of flow measured or 10 cubic feet per minute, whichever is greater.

(C) Use a flow monitor that is maintainable online, is able to continuously correct for temperature, pressure and, for ambient air flow monitor, moisture content, and is able to record dry flow in standard conditions (as defined in § 60.2) over one-minute averages.

(D) At least quarterly, perform a visual inspection of all components of the

monitor for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if the flow monitor is not equipped with a redundant flow sensor.

(E) Recalibrate the flow monitor in accordance with the manufacturer's procedures and specifications biennially (every two years) or at the frequency specified by the manufacturer.

(ii) The owner or operator shall use 20.9 percent as the oxygen content of the ambient air.

(iii) The owner or operator shall use product specifications (e.g., as reported

in material safety data sheets) for percent oxygen for purchased oxygen. For oxygen produced onsite, the percent oxygen shall be determined by periodic measurements or process knowledge.

(iv) The owner or operator shall calculate the hourly average O_2 concentration of the air/oxygen mixture used in the Claus burner using Equation 10 of this section:

$$\%O_2 = \left(\frac{20.9 \times Q_{air} + \%O_{2,oxy} \times Q_{oxy}}{Q_{air} + Q_{oxy}} \right) \quad (\text{Eq. 10})$$

Where:

$\%O_2$ = O_2 concentration of the air/oxygen mixture used in the Claus burner, percent by volume (dry basis);

20.9 = O_2 concentration in air, percent dry basis;

Q_{air} = Volumetric flow rate of ambient air used in the Claus burner, dscfm;

$\%O_{2,oxy}$ = O_2 concentration in the enriched oxygen stream, percent dry basis; and

Q_{oxy} = Volumetric flow rate of enriched oxygen stream used in the Claus burner, dscfm.

(v) The owner or operator shall use the hourly average O_2 concentration determined using Equation 8 of § 60.104a(d)(8) for use in Equation 1 or 2 of § 60.102a(f), as applicable, for each hour and determine the allowable emission limit as the arithmetic average of 12 contiguous 1-hour averages (i.e., the rolling 12-hour average).

(7) Owners or operators of a sulfur recovery plant that elects to comply with the SO_2 emission limit in § 60.102a(f)(1)(i) or (f)(2)(i) or the

reduced sulfur compounds emission limit in § 60.102a(f)(1)(ii) or (f)(2)(ii) as a flow rate weighted average for a group of release points from the sulfur recovery plant rather than for each process train or release point individually shall install, calibrate, operate, and maintain a CPMS to measure and record the volumetric gas flow rate of each release point within the group of release points from the sulfur recovery plant as specified in paragraphs (a)(7)(i) through (iv) of this section.

(i) The owner or operator shall install, calibrate, operate and maintain each flow monitor according to the manufacturer's procedures and specifications and the following requirements.

(A) Locate the monitor in a position that provides a representative measurement of the total gas flow rate.

(B) Use a flow sensor meeting an accuracy requirement of ± 5 percent over

the normal range of flow measured or 10 cubic feet per minute, whichever is greater.

(C) Use a flow monitor that is maintainable online, is able to continuously correct for temperature, pressure, and moisture content, and is able to record dry flow in standard conditions (as defined in § 60.2) over one-minute averages.

(D) At least quarterly, perform a visual inspection of all components of the monitor for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if the flow monitor is not equipped with a redundant flow sensor.

(E) Recalibrate the flow monitor in accordance with the manufacturer's procedures and specifications biennially (every two years) or at the frequency specified by the manufacturer.

(ii) The owner or operator shall correct the flow to 0 percent excess air using Equation 11 of this section:

$$Q_{adj} = Q_{meas} \left[\frac{(20.9 - \%O_2)}{20.9_c} \right] \quad (\text{Eq. 11})$$

Where:

Q_{adj} = Volumetric flow rate adjusted to 0 percent excess air, dry standard cubic feet per minute (dscfm);

Q_{meas} = Volumetric flow rate measured by the flow meter corrected to dry standard conditions, dscfm;

20.9_c = 20.9 percent O_2 - 0.0 percent O_2 (defined O_2 correction basis), percent; 20.9 = O_2 concentration in air, percent; and $\%O_2$ = O_2 concentration measured on a dry basis, percent.

(iii) The owner or operator shall calculate the flow weighted average SO_2 or reduced sulfur compounds concentration for each hour using Equation 12 of this section:

$$C_{ave} = \frac{\sum_{n=1}^N (C_n \times Q_{adj,n})}{\sum_{n=1}^N Q_{adj,n}} \quad (\text{Eq. 12})$$

Where:

C_{ave} = Flow weighted average concentration of the pollutant, ppmv (dry basis, zero percent excess air). The pollutant is either SO₂ (if complying with the SO₂ emission limit in § 60.102a(f)(1)(i) or (f)(2)(ii)) or reduced sulfur compounds (if complying with the reduced sulfur compounds emission limit in § 60.102a(f)(1)(ii) or (f)(2)(ii));

N = Number of release points within the group of release points from the sulfur recovery plant for which emissions averaging is elected;

C_n = Pollutant concentration in the n^{th} release point within the group of release points from the sulfur recovery plant for which emissions averaging is elected, ppmv (dry basis, zero percent excess air);

$Q_{adj,n}$ = Volumetric flow rate of the n^{th} release point within the group of release points from the sulfur recovery plant for which emissions averaging is elected, dry standard cubic feet per minute (dscfm, adjusted to 0 percent excess air).

(iv) For sulfur recovery plants that use oxygen or oxygen enriched air in the Claus burner, the owner or operator shall use Equation 10 of this section and the hourly emission limits determined in paragraph (a)(5)(v) or (a)(6)(v) of this section in-place of the pollutant concentration to determine the flow weighted average hourly emission limit for each hour. The allowable emission limit shall be calculated as the arithmetic average of 12 contiguous 1-hour averages (*i.e.*, the rolling 12-hour average).

(b) * * *

(2) All 12-hour periods during which the average concentration of reduced sulfur compounds (as SO₂) as measured by the reduced sulfur compounds continuous monitoring system required under paragraph (a)(2) or (3) of this section exceeds the applicable emission limit; or

(3) All 12-hour periods during which the average concentration of H₂S as measured by the H₂S continuous monitoring system required under paragraph (a)(4) of this section exceeds

the applicable emission limit (dry basis, 0 percent excess air).

■ 9. Section 60.107a is amended by revising paragraphs (a)(1)(i) and (ii), (b)(1)(iv), the first sentence of paragraph (b)(3)(iii), (d)(3), (e)(1) introductory text, (e)(1)(ii), (e)(2) introductory text, (e)(2)(ii), (e)(2)(vi)(C), (e)(3), (f)(1)(ii), and (h)(5) to read as follows:

§ 60.107a Monitoring of emissions and operations for fuel gas combustion devices and flares.

(a) * * *

(1) * * *

(i) The owner or operator shall install, operate, and maintain each SO₂ monitor according to Performance Specification 2 of appendix B to this part. The span value for the SO₂ monitor is 50 ppmv SO₂.

(ii) The owner or operator shall conduct performance evaluations for the SO₂ monitor according to the requirements of § 60.13(c) and Performance Specification 2 of appendix B to this part. The owner or operator shall use Methods 6, 6A, or 6C of appendix A–4 to this part for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981 (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A of appendix A–4 to this part. Samples taken by Method 6 of appendix A–4 to this part shall be taken at a flow rate of approximately 2 liters/min for at least 30 minutes. The relative accuracy limit shall be 20 percent or 4 ppmv, whichever is greater, and the calibration drift limit shall be 5 percent of the established span value.

* * * * *

(b) * * *

(1) * * *

(iv) The supporting test results from sampling the requested fuel gas stream/system demonstrating that the sulfur content is less than 5 ppmv H₂S. Sampling data must include, at

minimum, 2 weeks of daily monitoring (14 grab samples) for frequently operated fuel gas streams/systems; for infrequently operated fuel gas streams/systems, seven grab samples must be collected unless other additional information would support reduced sampling. The owner or operator shall use detector tubes (“length-of-stain tube” type measurement) following the “Gas Processors Association Standard 2377–86 (incorporated by reference—see § 60.17), using tubes with a maximum span between 10 and 40 ppmv inclusive when $1 \leq N \leq 10$, where N = number of pump strokes, to test the applicant fuel gas stream for H₂S; and

* * * * *

(3) * * *

(iii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application and the owner or operator chooses not to submit new information to support an exemption, the owner or operator must begin H₂S monitoring using daily stain sampling to demonstrate compliance using length-of-stain tubes with a maximum span between 200 and 400 ppmv inclusive when $1 \leq N \leq 5$, where N = number of pump strokes.

* * * * *

(d) * * *

(3) As an alternative to the requirements in paragraph (d)(2) of this section, the owner or operator of a gas-fired process heater shall install, operate and maintain a gas composition analyzer and determine the average F factor of the fuel gas using the factors in Table 1 of this subpart and Equation 13 of this section. If a single fuel gas system provides fuel gas to several process heaters, the F factor may be determined at a single location in the fuel gas system provided it is representative of the fuel gas fed to the affected process heater(s).

$$F_d = \frac{1,000,000 \times \sum (X_i \times MEV_i)}{\sum (X_i \times MHC_i)}$$

(Eq. 13)

Where:

F_d = F factor on dry basis at 0% excess air, dscf/MMBtu.

X_i = mole or volume fraction of each component in the fuel gas.

MEV_i = molar exhaust volume, dry standard cubic feet per mole (dscf/mol).

MHC_i = molar heat content, Btu per mole (Btu/mol).

1,000,000 = unit conversion, Btu per MMBtu.

* * * * *

(e) * * *

(1) *Total reduced sulfur monitoring requirements.* The owner or operator shall install, operate, calibrate and maintain an instrument or instruments for continuously monitoring and recording the concentration of total

reduced sulfur in gas discharged to the flare.

* * * * *

(ii) The owner or operator shall conduct performance evaluations of each total reduced sulfur monitor according to the requirements in § 60.13(c) and Performance Specification 5 of appendix B to this part. The owner or operator of each total

reduced sulfur monitor shall use EPA Method 15A of appendix A–5 to this part for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981 (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of appendix A–5 to this part. The alternative relative accuracy procedures described in section 16.0 of Performance Specification 2 of appendix B to this part (cylinder gas audits) may be used for conducting the relative accuracy evaluations, except that it is not necessary to include as much of the sampling probe or sampling line as practical.

* * * * *

(2) *H₂S monitoring requirements.* The owner or operator shall install, operate, calibrate, and maintain an instrument or

instruments for continuously monitoring and recording the concentration of H₂S in gas discharged to the flare according to the requirements in paragraphs (e)(2)(i) through (iii) of this section and shall collect and analyze samples of the gas and calculate total sulfur concentrations as specified in paragraphs (e)(2)(iv) through (ix) of this section.

* * * * *

(ii) The owner or operator shall conduct performance evaluations of each H₂S monitor according to the requirements in § 60.13(c) and Performance Specification 7 of appendix B to this part. The owner or operator shall use EPA Method 11, 15 or 15A of appendix A–5 to this part for conducting the relative accuracy evaluations. The method ANSI/ASME

PTC 19.10–1981 (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of appendix A–5 to this part. The alternative relative accuracy procedures described in section 16.0 of Performance Specification 2 of appendix B to this part (cylinder gas audits) may be used for conducting the relative accuracy evaluations, except that it is not necessary to include as much of the sampling probe or sampling line as practical.

* * * * *

(vi) * * *

(C) Determine the acceptable range for subsequent weekly samples based on the 95-percent confidence interval for the distribution of daily ratios based on the 10 individual daily ratios using Equation 14 of this section.

$$AR = Ratio_{Avg} \pm 2.262 \times SDev$$

(Eq. 14)

Where:

AR = Acceptable range of subsequent ratio determinations, unitless.

Ratio_{Avg} = 10-day average total sulfur-to-H₂S concentration ratio, unitless.

2.262 = t-distribution statistic for 95-percent 2-sided confidence interval for 10 samples (9 degrees of freedom).

SDev = Standard deviation of the 10 daily average total sulfur-to-H₂S concentration ratios used to develop the 10-day average

total sulfur-to-H₂S concentration ratio, unitless.

* * * * *

(3) *SO₂ monitoring requirements.* The owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of SO₂ from a process heater or other fuel gas combustion device that is combusting gas representative of the fuel gas in the flare gas line according to the

requirements in paragraph (a)(1) of this section, determine the F factor of the fuel gas at least daily according to the requirements in paragraphs (d)(2) through (4) of this section, determine the higher heating value of the fuel gas at least daily according to the requirements in paragraph (d)(7) of this section, and calculate the total sulfur content (as SO₂) in the fuel gas using Equation 15 of this section.

$$TS_{FG} = C_{SO_2} \times F_d \times HHV_{FG}$$

(Eq. 15)

Where:

TS_{FG} = Total sulfur concentration, as SO₂, in the fuel gas, ppmv.

C_{SO₂} = Concentration of SO₂ in the exhaust gas, ppmv (dry basis at 0-percent excess air).

F_d = F factor gas on dry basis at 0-percent excess air, dscf/MMBtu.

HHV_{FG} = Higher heating value of the fuel gas, MMBtu/scf.

* * * * *

(f) * * *

(1) * * *

(ii) Use a flow sensor meeting an accuracy requirement of ±20 percent of the flow rate at velocities ranging from 0.1 to 1 feet per second and an accuracy of ±5 percent of the flow rate for velocities greater than 1 feet per second.

* * * * *

(h) * * *

(5) *Daily O₂ limits for fuel gas combustion devices.* Each day during which the concentration of O₂ as measured by the O₂ continuous monitoring system required under paragraph (c)(6) or (d)(8) of this section

exceeds the O₂ operating limit or operating curve determined during the most recent biennial performance test.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 10. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 11. Section 63.14 is amended by:

■ a. Revising paragraph (h)(14);

■ b. Redesignating paragraphs (h)(82) through (99) as (h)(86) through (103), paragraphs (h)(77) through (81) as (h)(80) through (84), paragraphs (h)(73) through (76) as paragraphs (h)(75) through (78), and paragraphs (h)(15) through (72) as (16) through (73), respectively;

■ c. Revising newly redesignated paragraph (h)(78);

■ d. Adding paragraphs (h)(15), (74), (79), (85), (104) and (j)(2);

■ e. Redesignating paragraph (m)(3) through (21) as (m)(5) through (23), respectively, and paragraph (m)(2) as (m)(3).

■ f. Adding paragraphs (m)(2) and (4) and (n)(3); and

■ g. Revising paragraph (s)(1).

The revisions and additions read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(h) * * *

(14) ASTM D1945–03 (Reapproved 2010), Standard Test Method for Analysis of Natural Gas by Gas Chromatography, Approved January 1, 2010, IBR approved for §§ 63.670(j), 63.772(h), and 63.1282(g).

(15) ASTM D1945–14, Standard Test Method for Analysis of Natural Gas by Gas Chromatography, Approved

November 1, 2014, IBR approved for § 63.670(j).

* * * * *

(74) ASTM D6196–03 (Reapproved 2009), Standard Practice for Selection of Sorbents, Sampling, and Thermal Desorption Analysis Procedures for Volatile Organic Compounds in Air, Approved March 1, 2009, IBR approved for appendix A to this part: Method 325A and Method 325B.

* * * * *

(78) 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 § 63.1571(a), tables 4 and 5 to subpart JJJJJ, tables 4 and 6 to subpart KKKKK, tables 1, 2, and 5 to subpart UUUUU and appendix B to subpart UUUUU.

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(79) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for § 63.1571(a).

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(85) ASTM D6420–99 (Reapproved 2010), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, Approved October 1, 2010, IBR approved for § 63.670(j) and appendix A to this part: Method 325B.

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(104) ASTM UOP539–12, Refinery Gas Analysis by GC, Copyright 2012 (to UOP), IBR approved for § 63.670(j).

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(j) * * *

(2) BS EN 14662–4:2005, Ambient air quality standard method for the measurement of benzene concentrations—Part 4: Diffusive sampling followed by thermal desorption and gas chromatography, Published June 27, 2005, IBR approved for appendix A to this part: Method 325A and Method 325B.

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(m) * * *

(2) EPA–454/B–08–002, Office of Air Quality Planning and Standards (OAQPS), Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Measurements, Version 2.0 (Final), March 24, 2008, IBR approved for

§ 63.658(d) and appendix A to this part: Method 325A.

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(4) EPA–454/R–99–005, Office of Air Quality Planning and Standards (OAQPS), Meteorological Monitoring Guidance for Regulatory Modeling Applications, February 2000, IBR approved for appendix A to this part: Method 325A.

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(n) * * *

(3) ISO 16017–2:2003(E): Indoor, ambient and workplace air—sampling and analysis of volatile organic compounds by sorbent tube/thermal desorption/capillary gas chromatography—Part 2: Diffusive sampling, May 15, 2003, IBR approved for appendix A to this part: Method 325A and Method 325B.

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(s) * * *

(1) “Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,” Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, January 31, 2003, IBR approved for §§ 63.654(c) and (g), 63.655(i), and 63.11920.

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Subpart Y—National Emission Standards for Marine Tank Vessel Loading Operations

■ 12. Section 63.560 is amended by revising paragraph (a)(4) to read as follows:

§ 63.560 Applicability and designation of affected source.

(a) * * *

(4) Existing sources with emissions less than 10 and 25 tons must meet the submerged fill standards of 46 CFR 153.282.

* * * * *

Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

■ 13. Section 63.640 is amended by:

■ a. Revising paragraphs (a) introductory text and (c) introductory text;

■ c. Adding paragraph (c)(9);

■ d. Revising paragraphs (d)(5), (h), (k)(1), (l) introductory text, (l)(2) introductory text, (l)(2)(i), (l)(3) introductory text, (m) introductory text, (n) introductory text, (n)(1) through (5), (n)(8) introductory text, and (n)(8)(ii);

■ e. Adding paragraphs (n)(8)(vii) and (viii);

■ f. Revising paragraph (n)(9)(i);

■ g. Adding paragraph (n)(10);

■ h. Revising paragraph (o)(2)(i) introductory text;

■ i. Adding paragraph (o)(2)(i)(D);

■ j. Revising paragraph (o)(2)(ii) introductory text; and

■ k. Adding paragraphs (o)(2)(ii)(C) and (s).

The revisions and additions read as follows:

§ 63.640 Applicability and designation of affected source.

(a) This subpart applies to petroleum refining process units and to related emissions points that are specified in paragraphs (c)(1) through (9) of this section that are located at a plant site and that meet the criteria in paragraphs (a)(1) and (2) of this section:

* * * * *

(c) For the purposes of this subpart, the affected source shall comprise all emissions points, in combination, listed in paragraphs (c)(1) through (9) of this section that are located at a single refinery plant site.

* * * * *

(9) All releases associated with the decoking operations of a delayed coking unit, as defined in this subpart.

(d) * * *

(5) Emission points routed to a fuel gas system, as defined in § 63.641, provided that on and after January 30, 2019, any flares receiving gas from that fuel gas system are subject to § 63.670. No other testing, monitoring, recordkeeping, or reporting is required for refinery fuel gas systems or emission points routed to refinery fuel gas systems.

* * * * *

(h) Sources subject to this subpart are required to achieve compliance on or before the dates specified in table 11 of this subpart, except as provided in paragraphs (h)(1) through (3) of this section.

(1) Marine tank vessels at existing sources shall be in compliance with this subpart, except for §§ 63.657 through 63.660, no later than August 18, 1999, unless the vessels are included in an emissions average to generate emission credits. Marine tank vessels used to generate credits in an emissions average shall be in compliance with this subpart no later than August 18, 1998, unless an extension has been granted by the Administrator as provided in § 63.6(i).

(2) Existing Group 1 floating roof storage vessels meeting the applicability criteria in item 1 of the definition of Group 1 storage vessel shall be in compliance with § 63.646 at the first degassing and cleaning activity after August 18, 1998, or August 18, 2005, whichever is first.

(3) An owner or operator may elect to comply with the provisions of § 63.648(c) through (i) as an alternative to the provisions of § 63.648(a) and (b). In such cases, the owner or operator shall comply no later than the dates specified in paragraphs (h)(3)(i) through (iii) of this section.

(i) Phase I (see table 2 of this subpart), beginning on August 18, 1998;

(ii) Phase II (see table 2 of this subpart), beginning no later than August 18, 1999; and

(iii) Phase III (see table 2 of this subpart), beginning no later than February 18, 2001.

* * * * *

(k) * * *

(1) The reconstructed source, addition, or change shall be in compliance with the new source requirements in item (1), (2), or (3) of table 11 of this subpart, as applicable, upon initial startup of the reconstructed source or by August 18, 1995, whichever is later; and

* * * * *

(l) If an additional petroleum refining process unit is added to a plant site or if a miscellaneous process vent, storage vessel, gasoline loading rack, marine tank vessel loading operation, heat exchange system, or decoking operation that meets the criteria in paragraphs (c)(1) through (9) of this section is added to an existing petroleum refinery or if another deliberate operational process change creating an additional Group 1 emissions point(s) (as defined in § 63.641) is made to an existing petroleum refining process unit, and if the addition or process change is not subject to the new source requirements as determined according to paragraph (i) or (j) of this section, the requirements in paragraphs (l)(1) through (4) of this section shall apply. Examples of process changes include, but are not limited to, changes in production capacity, or feed or raw material where the change requires construction or physical alteration of the existing equipment or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph (l) and paragraph (m) of this section, process changes do not include: Process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.655(f).

* * * * *

(2) The added emission point(s) and any emission point(s) within the added or changed petroleum refining process

unit shall be in compliance with the applicable requirements in item (4) of table 11 of this subpart by the dates specified in paragraph (l)(2)(i) or (ii) of this section.

(i) If a petroleum refining process unit is added to a plant site or an emission point(s) is added to any existing petroleum refining process unit, the added emission point(s) shall be in compliance upon initial startup of any added petroleum refining process unit or emission point(s) or by the applicable compliance date in item (4) of table 11 of this subpart, whichever is later.

* * * * *

(3) The owner or operator of a petroleum refining process unit or of a storage vessel, miscellaneous process vent, wastewater stream, gasoline loading rack, marine tank vessel loading operation, heat exchange system, or decoking operation meeting the criteria in paragraphs (c)(1) through (9) of this section that is added to a plant site and is subject to the requirements for existing sources shall comply with the reporting and recordkeeping requirements that are applicable to existing sources including, but not limited to, the reports listed in paragraphs (l)(3)(i) through (vii) of this section. A process change to an existing petroleum refining process unit shall be subject to the reporting requirements for existing sources including, but not limited to, the reports listed in paragraphs (l)(3)(i) through (vii) of this section. The applicable reports include, but are not limited to:

* * * * *

(m) If a change that does not meet the criteria in paragraph (l) of this section is made to a petroleum refining process unit subject to this subpart, and the change causes a Group 2 emission point to become a Group 1 emission point (as defined in § 63.641), then the owner or operator shall comply with the applicable requirements of this subpart for existing sources, as specified in item (4) of table 11 of this subpart, for the Group 1 emission point as expeditiously as practicable, but in no event later than 3 years after the emission point becomes Group 1.

* * * * *

(n) Overlap of this subpart with other regulations for storage vessels. As applicable, paragraphs (n)(1), (3), (4), (6), and (7) of this section apply for Group 2 storage vessels and paragraphs (n)(2) and (5) of this section apply for Group 1 storage vessels.

(1) After the compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is subject to the provisions of 40 CFR part

60, subpart Kb, is required to comply only with the requirements of 40 CFR part 60, subpart Kb, except as provided in paragraph (n)(8) of this section. After the compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is subject to the provisions of 40 CFR part 61, subpart Y, is required to comply only with the requirements of 40 CFR part 61, subpart Y, except as provided in paragraph (n)(10) of this section.

(2) After the compliance dates specified in paragraph (h) of this section, a Group 1 storage vessel that is also subject to 40 CFR part 60, subpart Kb, is required to comply only with either 40 CFR part 60, subpart Kb, except as provided in paragraph (n)(8) of this section or this subpart. After the compliance dates specified in paragraph (h) of this section, a Group 1 storage vessel that is also subject to 40 CFR part 61, subpart Y, is required to comply only with either 40 CFR part 61, subpart Y, except as provided in paragraph (n)(10) of this section or this subpart.

(3) After the compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is part of a new source and is subject to 40 CFR 60.110b, but is not required to apply controls by 40 CFR 60.110b or 60.112b, is required to comply only with this subpart.

(4) After the compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is part of a new source and is subject to 40 CFR 61.270, but is not required to apply controls by 40 CFR 61.271, is required to comply only with this subpart.

(5) After the compliance dates specified in paragraph (h) of this section, a Group 1 storage vessel that is also subject to the provisions of 40 CFR part 60, subpart K or Ka, is required to only comply with the provisions of this subpart.

* * * * *

(8) Storage vessels described by paragraph (n)(1) of this section are to comply with 40 CFR part 60, subpart Kb, except as provided in paragraphs (n)(8)(i) through (vi) of this section. Storage vessels described by paragraph (n)(2) electing to comply with part 60, subpart Kb of this chapter shall comply with subpart Kb except as provided in paragraphs (n)(8)(i) through (viii) of this section.

* * * * *

(ii) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in § 60.113b(b) of this chapter or to inspect the vessel to determine compliance with

§ 60.113b(a) of this chapter because the roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.120(b)(7)(i) or (ii) of subpart G (only up to the compliance date specified in paragraph (h) of this section for compliance with § 63.660, as applicable) or either § 63.1063(c)(2)(iv)(A) or (B) of subpart WW.

* * * * *

(vii) To be in compliance with § 60.112b(a)(1)(iv) or (a)(2)(ii) of this chapter, guidepoles in floating roof storage vessels must be equipped with covers and/or controls (*e.g.*, pole float system, pole sleeve system, internal sleeve system or flexible enclosure system) as appropriate to comply with the “no visible gap” requirement.

(viii) If a flare is used as a control device for a storage vessel, on and after January 30, 2019, the owner or operator must meet the requirements of § 63.670 instead of the requirements referenced from part 60, subpart Kb of this chapter for that flare.

(9) * * *

(i) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in § 60.113a(a)(1) of this chapter because the floating roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.120(b)(7)(i) or (ii) of subpart G (only up to the compliance date specified in paragraph (h) of this section for compliance with § 63.660, as applicable) or either § 63.1063(c)(2)(iv)(A) or (B) of subpart WW.

* * * * *

(10) Storage vessels described by paragraph (n)(1) of this section are to comply with 40 CFR part 61, subpart Y, except as provided in paragraphs (n)(10)(i) through (vi) of this section. Storage vessels described by paragraph (n)(2) electing to comply with 40 CFR part 61, subpart Y, shall comply with subpart Y except as provided for in paragraphs (n)(10)(i) through (viii) of this section.

(i) Storage vessels that are to comply with § 61.271(b) of this chapter are exempt from the secondary seal requirements of § 61.271(b)(2)(ii) of this chapter during the gap measurements for the primary seal required by § 61.272(b) of this chapter.

(ii) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in § 61.272(b) of this chapter or to inspect

the vessel to determine compliance with § 61.272(a) of this chapter because the roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.120(b)(7)(i) or (ii) of subpart G (only up to the compliance date specified in paragraph (h) of this section for compliance with § 63.660, as applicable) or either § 63.1063(c)(2)(iv)(A) or (B) of subpart WW.

(iii) If a failure is detected during the inspections required by § 61.272(a)(2) of this chapter or during the seal gap measurements required by § 61.272(b)(1) of this chapter, and the vessel cannot be repaired within 45 days and the vessel cannot be emptied within 45 days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each. The owner or operator is not required to provide a request for the extension to the Administrator.

(iv) If an extension is utilized in accordance with paragraph (n)(10)(iii) of this section, the owner or operator shall, in the next periodic report, identify the vessel, provide the information listed in § 61.272(a)(2) or (b)(4)(iii) of this chapter, and describe the nature and date of the repair made or provide the date the storage vessel was emptied.

(v) Owners and operators of storage vessels complying with 40 CFR part 61, subpart Y, may submit the inspection reports required by § 61.275(a), (b)(1), and (d) of this chapter as part of the periodic reports required by this subpart, rather than within the 60-day period specified in § 61.275(a), (b)(1), and (d) of this chapter.

(vi) The reports of rim seal inspections specified in § 61.275(d) of this chapter are not required if none of the measured gaps or calculated gap areas exceed the limitations specified in § 61.272(b)(4) of this chapter. Documentation of the inspections shall be recorded as specified in § 61.276(a) of this chapter.

(vii) To be in compliance with § 61.271(a)(6) or (b)(3) of this chapter, guidepoles in floating roof storage vessels must be equipped with covers and/or controls (*e.g.*, pole float system, pole sleeve system, internal sleeve system or flexible enclosure system) as appropriate to comply with the “no visible gap” requirement.

(viii) If a flare is used as a control device for a storage vessel, on and after January 30, 2019, the owner or operator must meet the requirements of § 63.670 instead of the requirements referenced from part 61, subpart Y of this chapter for that flare.

(o) * * *

(2) * * *

(i) Comply with paragraphs (o)(2)(i)(A) through (D) of this section.

* * * * *

(D) If a flare is used as a control device, on and after January 30, 2019, the flare shall meet the requirements of § 63.670. Prior to January 30, 2019, the flare shall meet the applicable requirements of 40 CFR part 61, subpart FF, and subpart G of this part, or the requirements of § 63.670.

(ii) Comply with paragraphs (o)(2)(ii)(A) through (C) of this section.

* * * * *

(C) If a flare is used as a control device, on and after January 30, 2019, the flare shall meet the requirements of § 63.670. Prior to January 30, 2019, the flare shall meet the applicable requirements of 40 CFR part 61, subpart FF, and subpart G of this part, or the requirements of § 63.670.

* * * * *

(s) Overlap of this subpart with other regulation for flares. On January 30, 2019, flares that are subject to the provisions of 40 CFR 60.18 or 63.11 and subject to this subpart are required to comply only with the provisions specified in this subpart. Prior to January 30, 2019, flares that are subject to the provisions of 40 CFR 60.18 or 63.11 and elect to comply with the requirements in §§ 63.670 and 63.671 are required to comply only with the provisions specified in this subpart.

■ 14. Section 63.641 is amended by:

■ a. Adding, in alphabetical order, definitions of “Assist air,” “Assist steam,” “Center steam,” “Closed blowdown system,” “Combustion zone,” “Combustion zone gas,” “Decoking operations,” “Delayed coking unit,” “Flare,” “Flare purge gas,” “Flare supplemental gas,” “Flare sweep gas,” “Flare vent gas,” “Flexible enclosure device,” “Force majeure event,” “Lower steam,” “Net heating value,” “Perimeter assist air,” “Pilot gas,” “Premix assist air,” “Regulated material,” “Thermal expansion relief valve,” “Total steam,” and “Upper steam”; and

■ b. Revising the definitions of “Delayed coker vent,” “Emission point,” “Group 1 storage vessel,” “Miscellaneous process vent,” “Periodically discharged,” and “Reference control technology for storage vessels.”

The revisions and additions read as follows:

§ 63.641 Definitions.

* * * * *

Assist air means all air that intentionally is introduced prior to or at

a flare tip through nozzles or other hardware conveyance for the purposes including, but not limited to, protecting the design of the flare tip, promoting turbulence for mixing or inducing air into the flame. *Assist air* includes premix assist air and perimeter assist air. *Assist air* does not include the surrounding ambient air.

Assist steam means all steam that intentionally is introduced prior to or at a flare tip through nozzles or other hardware conveyance for the purposes including, but not limited to, protecting the design of the flare tip, promoting turbulence for mixing or inducing air into the flame. *Assist steam* includes, but is not necessarily limited to, center steam, lower steam and upper steam.

* * * * *

Center steam means the portion of assist steam introduced into the stack of a flare to reduce burnback.

Closed blowdown system means a system used for depressuring process vessels that is not open to the atmosphere and is configured of piping, ductwork, connections, accumulators/knockout drums, and, if necessary, flow inducing devices that transport gas or vapor from process vessel to a control device or back into the process.

* * * * *

Combustion zone means the area of the flare flame where the combustion zone gas combines for combustion.

Combustion zone gas means all gases and vapors found just after a flare tip. This gas includes all flare vent gas, total steam, and premix air.

* * * * *

Decoking operations means the sequence of steps conducted at the end of the delayed coking unit's cooling cycle to open the coke drum to the atmosphere in order to remove coke from the coke drum. *Decoking operations* begin at the end of the cooling cycle when steam released from the coke drum is no longer discharged via the unit's blowdown system but instead is vented directly to the atmosphere. *Decoking operations* include atmospheric depressuring (venting), deheading, draining, and decoking (coke cutting).

Delayed coker vent means a miscellaneous process vent that contains uncondensed vapors from the delayed coking unit's blowdown system. Venting from the *delayed coker vent* is typically intermittent in nature, and occurs primarily during the cooling cycle of a delayed coking unit coke drum when vapor from the coke drums cannot be sent to the fractionator column for product recovery. The emissions from the decoking operations,

which include direct atmospheric venting, deheading, draining, or decoking (coke cutting), are not considered to be *delayed coker vents*.

Delayed coking unit means a refinery process unit in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is produced in a series of closed, batch system reactors. A *delayed coking unit* includes, but is not limited to, all of the coke drums associated with a single fractionator; the fractionator, including the bottoms receiver and the overhead condenser; the coke drum cutting water and quench system, including the jet pump and coker quench water tank; and the coke drum blowdown recovery compressor system.

* * * * *

Emission point means an individual miscellaneous process vent, storage vessel, wastewater stream, equipment leak, decoking operation or heat exchange system associated with a petroleum refining process unit; an individual storage vessel or equipment leak associated with a bulk gasoline terminal or pipeline breakout station classified under Standard Industrial Classification code 2911; a gasoline loading rack classified under Standard Industrial Classification code 2911; or a marine tank vessel loading operation located at a petroleum refinery.

* * * * *

Flare means a combustion device lacking an enclosed combustion chamber that uses an uncontrolled volume of ambient air to burn gases. For the purposes of this rule, the definition of *flare* includes, but is not necessarily limited to, air-assisted flares, steam-assisted flares and non-assisted flares.

Flare purge gas means gas introduced between a flare header's water seal and the flare tip to prevent oxygen infiltration (backflow) into the flare tip. For a flare with no water seal, the function of *flare purge gas* is performed by flare sweep gas and, therefore, by definition, such a flare has no *flare purge gas*.

Flare supplemental gas means all gas introduced to the flare in order to improve the combustible characteristics of combustion zone gas.

Flare sweep gas means, for a flare with a flare gas recovery system, the gas intentionally introduced into the flare header system to maintain a constant flow of gas through the flare header in order to prevent oxygen buildup in the flare header; *flare sweep gas* in these flares is introduced prior to and recovered by the flare gas recovery system. For a flare without a flare gas recovery system, *flare sweep gas* means

the gas intentionally introduced into the flare header system to maintain a constant flow of gas through the flare header and out the flare tip in order to prevent oxygen buildup in the flare header and to prevent oxygen infiltration (backflow) into the flare tip.

Flare vent gas means all gas found just prior to the flare tip. This gas includes all flare waste gas (*i.e.*, gas from facility operations that is directed to a flare for the purpose of disposing of the gas), that portion of flare sweep gas that is not recovered, flare purge gas and flare supplemental gas, but does not include pilot gas, total steam or assist air.

Flexible enclosure device means a seal made of an elastomeric fabric (or other material) which completely encloses a slotted guidepole or ladder and eliminates the vapor emission pathway from inside the storage vessel through the guidepole slots or ladder slots to the outside air.

* * * * *

Force majeure event means a release of HAP, either directly to the atmosphere from a relief valve or discharged via a flare, that is demonstrated to the satisfaction of the Administrator to result from an event beyond the refinery owner or operator's control, such as natural disasters; acts of war or terrorism; loss of a utility external to the refinery (*e.g.*, external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the refinery owner or operator's control that impacts the refinery's ability to operate.

* * * * *

Group 1 storage vessel means:

(1) Prior to February 1, 2016:

(i) A storage vessel at an existing source that has a design capacity greater than or equal to 177 cubic meters and stored-liquid maximum true vapor pressure greater than or equal to 10.4 kilopascals and stored-liquid annual average true vapor pressure greater than or equal to 8.3 kilopascals and annual average HAP liquid concentration greater than 4 percent by weight total organic HAP;

(ii) A storage vessel at a new source that has a design storage capacity greater than or equal to 151 cubic meters and stored-liquid maximum true vapor pressure greater than or equal to 3.4 kilopascals and annual average HAP liquid concentration greater than 2 percent by weight total organic HAP; or

(iii) A storage vessel at a new source that has a design storage capacity greater than or equal to 76 cubic meters and less than 151 cubic meters and stored-

liquid maximum true vapor pressure greater than or equal to 77 kilopascals and annual average HAP liquid concentration greater than 2 percent by weight total organic HAP.

(2) On and after February 1, 2016:

(i) A storage vessel at an existing source that has a design capacity greater than or equal to 151 cubic meters (40,000 gallons) and stored-liquid maximum true vapor pressure greater than or equal to 5.2 kilopascals (0.75 pounds per square inch) and annual average HAP liquid concentration greater than 4 percent by weight total organic HAP;

(ii) A storage vessel at an existing source that has a design storage capacity greater than or equal to 76 cubic meters (20,000 gallons) and less than 151 cubic meters (40,000 gallons) and stored-liquid maximum true vapor pressure greater than or equal to 13.1 kilopascals (1.9 pounds per square inch) and annual average HAP liquid concentration greater than 4 percent by weight total organic HAP;

(iii) A storage vessel at a new source that has a design storage capacity greater than or equal to 151 cubic meters (40,000 gallons) and stored-liquid maximum true vapor pressure greater than or equal to 3.4 kilopascals (0.5 pounds per square inch) and annual average HAP liquid concentration greater than 2 percent by weight total organic HAP; or

(iv) A storage vessel at a new source that has a design storage capacity greater than or equal to 76 cubic meters (20,000 gallons) and less than 151 cubic meters (40,000 gallons) and stored-liquid maximum true vapor pressure greater than or equal to 13.1 kilopascals (1.9 pounds per square inch) and annual average HAP liquid concentration greater than 2 percent by weight total organic HAP.

* * * * *

Lower steam means the portion of assist steam piped to an exterior annular ring near the lower part of a flare tip, which then flows through tubes to the flare tip, and ultimately exits the tubes at the flare tip.

* * * * *

Miscellaneous process vent means a gas stream containing greater than 20 parts per million by volume organic HAP that is continuously or periodically discharged from a petroleum refining process unit meeting the criteria specified in § 63.640(a). *Miscellaneous process vents* include gas streams that are discharged directly to the atmosphere, gas streams that are routed to a control device prior to discharge to the atmosphere, or gas streams that are

diverted through a product recovery device prior to control or discharge to the atmosphere. *Miscellaneous process vents* include vent streams from: Caustic wash accumulators, distillation tower condensers/accumulators, flash/knockout drums, reactor vessels, scrubber overheads, stripper overheads, vacuum pumps, steam ejectors, hot wells, high point bleeds, wash tower overheads, water wash accumulators, blowdown condensers/accumulators, and delayed coker vents. *Miscellaneous process vents* do not include:

(1) Gaseous streams routed to a fuel gas system, provided that on and after January 30, 2019, any flares receiving gas from the fuel gas system are in compliance with § 63.670;

(2) Pressure relief device discharges;

(3) Leaks from equipment regulated under § 63.648;

(4) [Reserved]

(5) In situ sampling systems (onstream analyzers) until January 30, 2019. After this date, these sampling systems will be included in the definition of miscellaneous process vents;

(6) Catalytic cracking unit catalyst regeneration vents;

(7) Catalytic reformer regeneration vents;

(8) Sulfur plant vents;

(9) Vents from control devices such as scrubbers, boilers, incinerators, and electrostatic precipitators applied to catalytic cracking unit catalyst regeneration vents, catalytic reformer regeneration vents, and sulfur plant vents;

(10) Vents from any stripping operations applied to comply with the wastewater provisions of this subpart, subpart G of this part, or 40 CFR part 61, subpart FF;

(11) Emissions associated with delayed coking unit decoking operations;

(12) Vents from storage vessels;

(13) Emissions from wastewater collection and conveyance systems including, but not limited to, wastewater drains, sewer vents, and sump drains; and

(14) Hydrogen production plant vents through which carbon dioxide is removed from process streams or through which steam condensate produced or treated within the hydrogen plant is degassed or deaerated. *Net heating value* means the energy released as heat when a compound undergoes complete combustion with oxygen to form gaseous carbon dioxide and gaseous water (also referred to as lower heating value).

* * * * *

Perimeter assist air means the portion of assist air introduced at the perimeter

of the flare tip or above the flare tip. *Perimeter assist air* includes air intentionally entrained in lower and upper steam. *Perimeter assist air* includes all assist air except pre-mix assist air.

Periodically discharged means discharges that are intermittent and associated with routine operations, maintenance activities, startups, shutdowns, malfunctions, or process upsets.

* * * * *

Pilot gas means gas introduced into a flare tip that provides a flame to ignite the flare vent gas.

* * * * *

Premix assist air means the portion of assist air that is introduced to the flare vent gas, whether injected or induced, prior to the flare tip. Premix assist air also includes any air intentionally entrained in center steam.

* * * * *

Reference control technology for storage vessels means either:

(1) For Group 1 storage vessels complying with § 63.660:

(i) An internal floating roof, including an external floating roof converted to an internal floating roof, meeting the specifications of § 63.1063(a)(1)(i) and (b);

(ii) An external floating roof meeting the specifications of § 63.1063(a)(1)(ii), (a)(2), and (b); or

(iii) [Reserved]

(iv) A closed-vent system to a control device that reduces organic HAP emissions by 95 percent, or to an outlet concentration of 20 parts per million by volume (ppmv).

(v) For purposes of emissions averaging, these four technologies are considered equivalent.

(2) For all other storage vessels:

(i) An internal floating roof meeting the specifications of § 63.119(b) of subpart G except for § 63.119(b)(5) and (6);

(ii) An external floating roof meeting the specifications of § 63.119(c) of subpart G except for § 63.119(c)(2);

(iii) An external floating roof converted to an internal floating roof meeting the specifications of § 63.119(d) of subpart G except for § 63.119(d)(2); or

(iv) A closed-vent system to a control device that reduces organic HAP emissions by 95 percent, or to an outlet concentration of 20 parts per million by volume.

(v) For purposes of emissions averaging, these four technologies are considered equivalent.

* * * * *

Regulated material means any stream associated with emission sources listed

in § 63.640(c) required to meet control requirements under this subpart as well as any stream for which this subpart or a cross-referencing subpart specifies that the requirements for flare control devices in § 63.670 must be met.

* * * * *

Thermal expansion relief valve means a pressure relief valve designed to protect equipment from excess pressure due to thermal expansion of blocked liquid-filled equipment or piping due to ambient heating or heat from a heat tracing system. Pressure relief valves designed to protect equipment from excess pressure due to blockage against a pump or compressor or due to fire contingency are not thermal expansion relief valves.

* * * * *

Total steam means the total of all steam that is supplied to a flare and includes, but is not limited to, lower steam, center steam and upper steam.

Upper steam means the portion of assist steam introduced via nozzles located on the exterior perimeter of the upper end of the flare tip.

* * * * *

■ 15. Section 63.642 is amended by:

- a. Adding paragraph (b);
- b. Revising paragraphs (d)(3), (e), (i), (k) introductory text, (k)(1), (l) introductory text, and (l)(2); and
- c. Adding paragraph (n).

The revisions and additions read as follows:

§ 63.642 General standards.

* * * * *

(b) The emission standards set forth in this subpart shall apply at all times.

* * * * *

(d) * * *

(3) Performance tests shall be conducted according to the provisions of § 63.7(e) except that performance tests shall be conducted at maximum representative operating capacity for the process. During the performance test, an owner or operator shall operate the control device at either maximum or minimum representative operating conditions for monitored control device parameters, whichever results in lower emission reduction. An owner or operator shall not conduct a performance test during startup, shutdown, periods when the control device is bypassed or periods when the process, monitoring equipment or control device is not operating properly. The owner/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 the test was conducted at maximum representative operating capacity. 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) All applicable records shall be maintained as specified in § 63.655(i).

* * * * *

(i) The owner or operator of an existing source shall demonstrate compliance with the emission standard in paragraph (g) of this section by following the procedures specified in paragraph (k) of this section for all emission points, or by following the emissions averaging compliance approach specified in paragraph (l) of this section for specified emission points and the procedures specified in paragraph (k)(1) of this section.

* * * * *

(k) The owner or operator of an existing source may comply, and the owner or operator of a new source shall comply, with the applicable provisions in §§ 63.643 through 63.645, 63.646 or 63.660, 63.647, 63.650, and 63.651, as specified in § 63.640(h).

(1) The owner or operator using this compliance approach shall also comply with the requirements of §§ 63.648 and/or 63.649, 63.654, 63.655, 63.657, 63.658, 63.670 and 63.671, as applicable.

* * * * *

(l) The owner or operator of an existing source may elect to control some of the emission points within the source to different levels than specified under §§ 63.643 through 63.645, 63.646 or 63.660, 63.647, 63.650, and 63.651, as applicable according to § 63.640(h), by using an emissions averaging compliance approach as long as the overall emissions for the source do not exceed the emission level specified in paragraph (g) of this section. The owner or operator using emissions averaging shall meet the requirements in paragraphs (l)(1) and (2) of this section.

* * * * *

(2) Comply with the requirements of §§ 63.648 and/or 63.649, 63.654, 63.652, 63.653, 63.655, 63.657, 63.658, 63.670 and 63.671, as applicable.

* * * * *

(n) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for

minimizing emissions. The general duty to minimize emissions does not require the owner operator 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.

■ 16. Section 63.643 is amended by revising paragraphs (a) introductory text and (a)(1) and adding paragraph (c) to read as follows:

§ 63.643 Miscellaneous process vent provisions.

(a) The owner or operator of a Group 1 miscellaneous process vent as defined in § 63.641 shall comply with the requirements of either paragraph (a)(1) or (2) of this section or, if applicable, paragraph (c) of this section. The owner or operator of a miscellaneous process vent that meets the conditions in paragraph (c) of this section is only required to comply with the requirements of paragraph (c) of this section and § 63.655(g)(13) and (i)(12) for that vent.

(1) Reduce emissions of organic HAP's using a flare. On and after January 30, 2019, the flare shall meet the requirements of § 63.670. Prior to January 30, 2019, the flare shall meet the requirements of § 63.11(b) of subpart A or the requirements of § 63.670.

* * * * *

(c) An owner or operator may designate a process vent as a maintenance vent if the vent is only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed or placed into service. The owner or operator does not need to designate a maintenance vent as a Group 1 or Group 2 miscellaneous process vent. The owner or operator must comply with the applicable requirements in paragraphs (c)(1) through (3) of this section for each maintenance vent.

(1) Prior to venting to the atmosphere, process liquids are removed from the equipment as much as practical and the equipment is depressured to a control device, fuel gas system, or back to the process until one of the following conditions, as applicable, is met.

(i) The vapor in the equipment served by the maintenance vent has a lower

explosive limit (LEL) of less than 10 percent.

(ii) If there is no ability to measure the LEL of the vapor in the equipment based on the design of the equipment, the pressure in the equipment served by the maintenance vent is reduced to 5 psig or less. Upon opening the maintenance vent, active purging of the equipment cannot be used until the LEL of the vapors in the maintenance vent (or inside the equipment if the maintenance is a hatch or similar type of opening) equipment is less than 10 percent.

(iii) The equipment served by the maintenance vent contains less than 72 pounds of VOC.

(iv) If the maintenance vent is associated with equipment containing pyrophoric catalyst (e.g., hydrotreaters and hydrocrackers) at refineries that do not have a pure hydrogen supply, the LEL of the vapor in the equipment must be less than 20 percent, except for one event per year not to exceed 35 percent.

(2) Except for maintenance vents complying with the alternative in paragraph (c)(1)(iii) of this section, the owner or operator must determine the LEL or, if applicable, equipment pressure using process instrumentation or portable measurement devices and follow procedures for calibration and maintenance according to manufacturer's specifications.

(3) For maintenance vents complying with the alternative in paragraph (c)(1)(iii) of this section, the owner or operator shall determine mass of VOC in the equipment served by the maintenance vent based on the equipment size and contents after considering any contents drained or purged from the equipment. Equipment size may be determined from equipment design specifications. Equipment contents may be determined using process knowledge.

■ 17. Section 63.644 is amended by revising paragraphs (a) introductory text, (a)(2), and (c) to read as follows:

§ 63.644 Monitoring provisions for miscellaneous process vents.

(a) Except as provided in paragraph (b) of this section, each owner or operator of a Group 1 miscellaneous process vent that uses a combustion device to comply with the requirements in § 63.643(a) shall install the monitoring equipment specified in paragraph (a)(1), (2), (3), or (4) of this section, depending on the type of combustion device used. All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment

will monitor accurately and, except for CPMS installed for pilot flame monitoring, must meet the applicable minimum accuracy, calibration and quality control requirements specified in table 13 of this subpart.

(2) Where a flare is used prior to January 30, 2019, a device (including but not limited to a thermocouple, an ultraviolet beam sensor, or an infrared sensor) capable of continuously detecting the presence of a pilot flame is required, or the requirements of § 63.670 shall be met. Where a flare is used on and after January 30, 2019, the requirements of § 63.670 shall be met.

(c) The owner or operator of a Group 1 miscellaneous process vent using a vent system that contains bypass lines that could divert a vent stream away from the control device used to comply with paragraph (a) of this section either directly to the atmosphere or to a control device that does not comply with the requirements in § 63.643(a) shall comply with either paragraph (c)(1) or (2) of this section. Use of the bypass at any time to divert a Group 1 miscellaneous process vent stream to the atmosphere or to a control device that does not comply with the requirements in § 63.643(a) is an emissions standards violation. Equipment such as low leg drains and equipment subject to § 63.648 are not subject to this paragraph (c).

(1) Install, calibrate and maintain a flow indicator that determines whether a vent stream flow is present at least once every hour. A manual block valve equipped with a valve position indicator may be used in lieu of a flow indicator, as long as the valve position indicator is monitored continuously. Records shall be generated as specified in § 63.655(h) and (i). The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and that the vent stream is not diverted through the bypass line.

■ 18. Section 63.645 is amended by revising paragraphs (e)(1) and (f)(2) to read as follows:

§ 63.645 Test methods and procedures for miscellaneous process vents.

* * * * *

(e) * * *

(1) Methods 1 or 1A of 40 CFR part 60, appendix A–1, as appropriate, shall be used for selection of the sampling site. For vents smaller than 0.10 meter in diameter, sample at the center of the vent.

* * * * *

(f) * * *

(2) The gas volumetric flow rate shall be determined using Methods 2, 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.

* * * * *

■ 19. Section 63.646 is amended by adding introductory text and revising paragraph (b)(2) to read as follows:

§ 63.646 Storage vessel provisions.

Upon a demonstration of compliance with the standards in § 63.660 by the compliance dates specified in § 63.640(h), the standards in this section shall no longer apply.

* * * * *

(b) * * *

(2) When an owner or operator and the Administrator do not agree on whether the annual average weight percent organic HAP in the stored liquid is above or below 4 percent for a storage vessel at an existing source or above or below 2 percent for a storage vessel at a new source, an appropriate method (based on the type of liquid stored) as published by EPA or a consensus-based standards organization shall be used. Consensus-based standards organizations include, but are not limited to, the following: ASTM International (100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–B2959, (800) 262–1373, <http://www.astm.org>), the American National Standards Institute (ANSI, 1819 L Street NW., 6th floor, Washington, DC 20036, (202) 293–8020, <http://www.ansi.org>), the American Gas Association (AGA, 400 North Capitol Street NW., 4th Floor, Washington, DC 20001, (202) 824–7000, <http://www.aga.org>), the American Society of Mechanical Engineers (ASME, Three Park Avenue, New York, NY 10016–5990, (800) 843–2763, <http://www.asme.org>), the American Petroleum Institute (API, 1220 L Street NW., Washington, DC 20005–4070, (202) 682–8000, <http://www.api.org>), and the North American Energy Standards Board (NAESB, 801 Travis Street, Suite 1675, Houston, TX 77002, (713) 356–0060, <http://www.naesb.org>).

* * * * *

- 20. Section 63.647 is amended by:
- a. Revising paragraph (a);
- b. Redesignating paragraph (c) as paragraph (d); and
- c. Adding paragraph (c).

The revisions and additions read as follows:

§ 63.647 Wastewater provisions.

(a) Except as provided in paragraphs (b) and (c) of this section, each owner or operator of a Group 1 wastewater stream shall comply with the requirements of §§ 61.340 through 61.355 of this chapter for each process wastewater stream that meets the definition in § 63.641.

* * * * *

(c) If a flare is used as a control device, on and after January 30, 2019, the flare shall meet the requirements of § 63.670. Prior to January 30, 2019, the flare shall meet the applicable requirements of part 61, subpart FF of this chapter, or the requirements of § 63.670.

* * * * *

- 21. Section 63.648 is amended by:
- a. Adding paragraph (a)(3);
- b. Revising paragraph (c) introductory text; and
- c. Adding paragraphs (c)(11) and (12) and (j).

The revisions and additions read as follows:

§ 63.648 Equipment leak standards.

(a) * * *

(3) If a flare is used as a control device, on and after January 30, 2019, the flare shall meet the requirements of § 63.670. Prior to January 30, 2019, the flare shall meet the applicable requirements of part 60, subpart VV of this chapter, or the requirements of § 63.670.

* * * * *

(c) In lieu of complying with the existing source provisions of paragraph (a) in this section, an owner or operator may elect to comply with the requirements of §§ 63.161 through 63.169, 63.171, 63.172, 63.175, 63.176, 63.177, 63.179, and 63.180 of subpart H except as provided in paragraphs (c)(1) through (12) and (e) through (i) of this section.

* * * * *

(11) [Reserved]

(12) If a flare is used as a control device, on and after January 30, 2019, the flare shall meet the requirements of § 63.670. Prior to January 30, 2019, the flare shall meet the applicable requirements of §§ 63.172 and 63.180, or the requirements of § 63.670.

* * * * *

(j) Except as specified in paragraph (j)(4) of this section, the owner or

operator must comply with the requirements specified in paragraphs (j)(1) and (2) of this section for pressure relief devices, such as relief valves or rupture disks, in organic HAP gas or vapor service instead of the pressure relief device requirements of § 60.482–4 or § 63.165, as applicable. Except as specified in paragraphs (j)(4) and (5) of this section, the owner or operator must also comply with the requirements specified in paragraph (j)(3) of this section for all pressure relief devices.

(1) *Operating requirements.* Except during a pressure release, operate each pressure relief device in organic HAP gas or vapor service with an instrument reading of less than 500 ppm above background as detected by Method 21 of 40 CFR part 60, appendix A–7.

(2) *Pressure release requirements.* For pressure relief devices in organic HAP gas or vapor service, the owner or operator must comply with the applicable requirements in paragraphs (j)(2)(i) through (iii) of this section following a pressure release.

(i) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as specified in § 60.485(b) or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(ii) If the pressure relief device includes a rupture disk, either comply with the requirements in paragraph (j)(2)(i) of this section (not replacing the rupture disk) or install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator must conduct instrument monitoring, as specified in § 60.485(b) or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(iii) If the pressure relief device consists only of a rupture disk, install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator may not initiate startup of the equipment served by the rupture disk until the rupture disk is replaced. The owner or operator must conduct instrument monitoring, as specified in § 60.485(b) or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to

organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(3) *Pressure release management.* Except as specified in paragraphs (j)(4) and (5) of this section, the owner or operator shall comply with the requirements specified in paragraphs (j)(3)(i) through (v) of this section for all pressure relief devices in organic HAP service no later than January 30, 2019.

(i) The owner or operator must equip each affected pressure relief device with a device(s) or use a monitoring system that is capable of:

(A) Identifying the pressure release;

(B) Recording the time and duration of each pressure release; and

(C) Notifying operators immediately that a pressure release is occurring. The device or monitoring system may be either specific to the pressure relief device itself or may be associated with the process system or piping, sufficient to indicate a pressure release to the atmosphere. Examples of these types of devices and systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, or pressure monitor.

(ii) The owner or operator must apply at least three redundant prevention measures to each affected pressure relief device and document these measures. Examples of prevention measures include:

(A) Flow, temperature, level and pressure indicators with deadman switches, monitors, or automatic actuators.

(B) Documented routine inspection and maintenance programs and/or operator training (maintenance programs and operator training may count as only one redundant prevention measure).

(C) Inherently safer designs or safety instrumentation systems.

(D) Deluge systems.

(E) Staged relief system where initial pressure relief valve (with lower set release pressure) discharges to a flare or other closed vent system and control device.

(iii) If any affected pressure relief device releases to atmosphere as a result of a pressure release event, the owner or operator must perform root cause analysis and corrective action analysis according to the requirement in paragraph (j)(6) of this section and implement corrective actions according to the requirements in paragraph (j)(7) of this section. The owner or operator must also calculate the quantity of organic HAP released during each pressure

release event and report this quantity as required in § 63.655(g)(10)(iii). Calculations may be based on data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge.

(iv) The owner or operator shall determine the total number of release events occurred during the calendar year for each affected pressure relief device separately. The owner or operator shall also determine the total number of release events for each pressure relief device for which the root cause analysis concluded that the root cause was a *force majeure* event, as defined in this subpart.

(v) Except for pressure relief devices described in paragraphs (j)(4) and (5) of this section, the following release events are a violation of the pressure release management work practice standards.

(A) Any release event for which the root cause of the event was determined to be operator error or poor maintenance.

(B) A second release event not including *force majeure* events from a single pressure relief device in a 3 calendar year period for the same root cause for the same equipment.

(C) A third release event not including *force majeure* events from a single pressure relief device in a 3 calendar year period for any reason.

(4) *Pressure relief devices routed to a control device.* If all releases and potential leaks from a pressure relief device are routed through a closed vent system to a control device, back into the process or to the fuel gas system, the owner or operator is not required to comply with paragraph (j)(1), (2), or (3) (if applicable) of this section. Both the closed vent system and control device (if applicable) must meet the requirements of § 63.644. When complying with this paragraph (j)(4), all references to “Group 1 miscellaneous process vent” in § 63.644 mean “pressure relief device.” If a pressure relief device complying with this paragraph (j)(4) is routed to the fuel gas system, then on and after January 30, 2019, any flares receiving gas from that fuel gas system must be in compliance with § 63.670.

(5) *Pressure relief devices exempted from pressure release management requirements.* The following types of pressure relief devices are not subject to the pressure release management requirements in paragraph (j)(3) of this section.

(i) Pressure relief devices in heavy liquid service, as defined in § 63.641.

(ii) Pressure relief devices that only release material that is liquid at

standard conditions (1 atmosphere and 68 degrees Fahrenheit) and that are hard-piped to a controlled drain system (*i.e.*, a drain system meeting the requirements for Group 1 wastewater streams in § 63.647(a)) or piped back to the process or pipeline.

(iii) Thermal expansion relief valves.

(iv) Pressure relief devices designed with a set relief pressure of less than 2.5 psig.

(v) Pressure relief devices that do not have the potential to emit 72 lbs/day or more of VOC based on the valve diameter, the set release pressure, and the equipment contents.

(vi) Pressure relief devices on mobile equipment.

(6) *Root cause analysis and corrective action analysis.* A root cause analysis and corrective action analysis must be completed as soon as possible, but no later than 45 days after a release event. Special circumstances affecting the number of root cause analyses and/or corrective action analyses are provided in paragraphs (j)(6)(i) through (iv) of this section.

(i) You may conduct a single root cause analysis and corrective action analysis for a single emergency event that causes two or more pressure relief devices installed on the same equipment to release.

(ii) You may conduct a single root cause analysis and corrective action analysis for a single emergency event that causes two or more pressure relief devices to release, regardless of the equipment served, if the root cause is reasonably expected to be a *force majeure* event, as defined in this subpart.

(iii) Except as provided in paragraphs (j)(6)(i) and (ii) of this section, if more than one pressure relief device has a release during the same time period, an initial root cause analysis shall be conducted separately for each pressure relief device that had a release. If the initial root cause analysis indicates that the release events have the same root cause(s), the initially separate root cause analyses may be recorded as a single root cause analysis and a single corrective action analysis may be conducted.

(7) *Corrective action implementation.* Each owner or operator required to conduct a root cause analysis and corrective action analysis as specified in paragraphs (j)(3)(iii) and (j)(6) of this section shall implement the corrective action(s) identified in the corrective action analysis in accordance with the applicable requirements in paragraphs (j)(7)(i) through (iii) of this section.

(i) All corrective action(s) must be implemented within 45 days of the

event for which the root cause and corrective action analyses were required or as soon thereafter as practicable. If an owner or operator concludes that no corrective action should be implemented, the owner or operator shall record and explain the basis for that conclusion no later than 45 days following the event.

(ii) For corrective actions that cannot be fully implemented within 45 days following the event for which the root cause and corrective action analyses were required, the owner or operator shall develop an implementation schedule to complete the corrective action(s) as soon as practicable.

(iii) No later than 45 days following the event for which a root cause and corrective action analyses were required, the owner or operator shall record the corrective action(s) completed to date, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

■ 22. Section 63.649 is amended by revising definition of C_c term in the equation in paragraph (c)(6)(i) to read as follows:

§ 63.649 Alternative means of emission limitation: Connectors in gas/vapor service and light liquid service.

* * * * *

(c) * * *

(6) * * *

(i) * * *

C_c = Optional credit for removed connectors = $0.67 \times$ net number (*i.e.*, the total number of connectors removed minus the total added) of connectors in organic HAP service removed from the process unit after the applicability date set forth in § 63.640(h)(3)(iii) for existing process units, and after the date of start-up for new process units. If credits are not taken, then $C_c = 0$.

* * * * *

■ 23. Section 63.650 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 63.650 Gasoline loading rack provisions.

(a) Except as provided in paragraphs (b) through (d) of this section, each owner or operator of a Group 1 gasoline loading rack classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a petroleum refinery shall comply with subpart R of this part, §§ 63.421, 63.422(a) through (c) and (e), 63.425(a) through (c) and (e) through (i), 63.427(a) and (b), and 63.428(b), (c), (g)(1), (h)(1) through (3), and (k).

* * * * *

(d) If a flare is used as a control device, on and after January 30, 2019, the flare shall meet the requirements of § 63.670. Prior to January 30, 2019, the flare shall meet the applicable requirements of subpart R of this part, or the requirements of § 63.670.

■ 24. Section 63.651 is amended by revising paragraphs (a) and (d) and adding paragraph (e) to read as follows:

§ 63.651 Marine tank vessel loading operation provisions.

(a) Except as provided in paragraphs (b) through (e) of this section, each owner or operator of a marine tank vessel loading operation located at a petroleum refinery shall comply with the requirements of §§ 63.560 through 63.568.

* * * * *

(d) The compliance time of 4 years after promulgation of 40 CFR part 63, subpart Y, does not apply. The compliance time is specified in § 63.640(h)(1).

(e) If a flare is used as a control device, on and after January 30, 2019, the flare shall meet the requirements of § 63.670. Prior to January 30, 2019, the flare shall meet the applicable requirements of subpart Y of this part, or the requirements of § 63.670.

■ 25. Section 63.652 is amended by:

■ a. Revising paragraph (a);

■ b. Removing and reserving paragraph (f)(2); and

■ c. Revising paragraphs (g)(2)(iii)(B)(1), (h)(3), (k) introductory text, and (k)(3).

The revisions and additions read as follows:

§ 63.652 Emissions averaging provisions.

(a) This section applies to owners or operators of existing sources who seek to comply with the emission standard in § 63.642(g) by using emissions averaging according to § 63.642(l) rather than following the provisions of §§ 63.643 through 63.645, 63.646 or 63.660, 63.647, 63.650, and 63.651. Existing marine tank vessel loading operations located at the Valdez Marine Terminal source may not comply with the standard by using emissions averaging.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) * * *

(1) The percent reduction shall be measured according to the procedures in § 63.116 of subpart G if a combustion control device is used. For a flare meeting the criteria in § 63.116(a) of subpart G or § 63.670, as applicable, or a boiler or process heater meeting the criteria in § 63.645(d) or § 63.116(b) of

subpart G, the percentage of reduction shall be 98 percent. If a noncombustion control device is used, percentage of reduction shall be demonstrated by a performance test at the inlet and outlet of the device, or, if testing is not feasible, by a control design evaluation and documented engineering calculations.

* * * * *

(h) * * *

(3) Emissions from storage vessels shall be determined as specified in § 63.150(h)(3) of subpart G, except as follows:

(i) For storage vessels complying with § 63.646:

(A) All references to § 63.119(b) in § 63.150(h)(3) of subpart G shall be replaced with: § 63.119(b) or § 63.119(b) except for § 63.119(b)(5) and (6).

(B) All references to § 63.119(c) in § 63.150(h)(3) of subpart G shall be replaced with: § 63.119(c) or § 63.119(c) except for § 63.119(c)(2).

(C) All references to § 63.119(d) in § 63.150(h)(3) of subpart G shall be replaced with: § 63.119(d) or § 63.119(d) except for § 63.119(d)(2).

(ii) For storage vessels complying with § 63.660:

(A) Section 63.1063(a)(1)(i), (a)(2), and (b) or § 63.1063(a)(1)(i) and (b) shall apply instead of § 63.119(b) in § 63.150(h)(3) of subpart G.

(B) Section 63.1063(a)(1)(ii), (a)(2), and (b) shall apply instead of § 63.119(c) in § 63.150(h)(3) of subpart G.

(C) Section 63.1063(a)(1)(i), (a)(2), and (b) or § 63.1063(a)(1)(i) and (b) shall apply instead of § 63.119(d) in § 63.150(h)(3) of subpart G.

* * * * *

(k) The owner or operator shall demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the State or local permitting authority, greater risk to human health or the environment than if the emission points were controlled according to the provisions in §§ 63.643 through 63.645, 63.646 or 63.660, 63.647, 63.650, and 63.651, as applicable.

* * * * *

(3) An emissions averaging plan that does not demonstrate an equivalent or lower hazard or risk to the satisfaction of the State or local permitting authority shall not be approved. The State or local permitting authority may require such adjustments to the emissions averaging plan as are necessary in order to ensure that the average will not result in greater hazard or risk to human health or the environment than would result if the emission points were controlled

according to §§ 63.643 through 63.645, 63.646 or 63.660, 63.647, 63.650, and 63.651, as applicable.

* * * * *

■ 26. Section 63.653 is amended by revising paragraphs (a) introductory text, (a)(3)(i) and (ii), and (a)(7) to read as follows:

§ 63.653 Monitoring, recordkeeping, and implementation plan for emissions averaging.

(a) For each emission point included in an emissions average, the owner or operator shall perform testing, monitoring, recordkeeping, and reporting equivalent to that required for Group 1 emission points complying with §§ 63.643 through 63.645, 63.646 or 63.660, 63.647, 63.650, and 63.651, as applicable. The specific requirements for miscellaneous process vents, storage vessels, wastewater, gasoline loading racks, and marine tank vessels are identified in paragraphs (a)(1) through (7) of this section.

* * * * *

(3) * * *

(i) Perform the monitoring or inspection procedures in § 63.646 and either § 63.120 of subpart G or § 63.1063 of subpart WW, as applicable; and

(ii) For closed vent systems with control devices, conduct an initial design evaluation as specified in § 63.646 and either § 63.120(d) of subpart G or § 63.985(b) of subpart SS, as applicable.

* * * * *

(7) If an emission point in an emissions average is controlled using a pollution prevention measure or a device or technique for which no monitoring parameters or inspection procedures are specified in §§ 63.643 through 63.645, 63.646 or 63.660, 63.647, 63.650, and 63.651, as applicable, the owner or operator shall establish a site-specific monitoring parameter and shall submit the information specified in § 63.655(h)(4) in the Implementation Plan.

* * * * *

■ 27. Section 63.655 is amended by:

■ a. Revising paragraphs (f) introductory text, (f)(1) introductory text, (f)(1)(i)(A) introductory text, (f)(1)(i)(A)(2) and (3), (f)(1)(i)(B) introductory text, (f)(1)(i)(B)(2), (f)(1)(i)(D)(2), (f)(1)(iv) introductory text, and (f)(1)(iv)(A);

■ b. Adding paragraphs (f)(1)(vii) and (viii);

■ c. Revising paragraphs (f)(2) introductory text, (f)(3) introductory text, the first sentence of (f)(6), (g) introductory text, (g)(1) through (5), (g)(6)(i)(D), (g)(6)(iii), and (g)(7)(i);

- d. Adding paragraphs (g)(10) through (14);
- e. Removing and reserving paragraph (h)(1);
- f. Revising paragraphs (h)(2) introductory text, (h)(2)(i)(B), (h)(2)(ii), and (h)(5)(iii);
- g. Adding paragraphs (h)(8) and (9) and (i) introductory text;
- h. Revising paragraph (i)(1) introductory text and paragraph (i)(1)(ii);
- i. Adding paragraphs (i)(1)(v) and (vi);
- j. Redesignating paragraphs (i)(4) and (5) as paragraphs (i)(5) and (6), respectively;
- k. Adding paragraph (i)(4);
- l. Revising newly redesignated paragraph (i)(5) introductory text; and
- m. Adding paragraphs (i)(7) through (12).

The revisions and additions read as follows:

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(f) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status report within 150 days after the compliance dates specified in § 63.640(h) with the exception of Notification of Compliance Status reports submitted to comply with § 63.640(l)(3) and for storage vessels subject to the compliance schedule specified in § 63.640(h)(2). Notification of Compliance Status reports required by § 63.640(l)(3) and for storage vessels subject to the compliance dates specified in § 63.640(h)(2) shall be submitted according to paragraph (f)(6) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If the required information has been submitted before the date 150 days after the compliance date specified in § 63.640(h), a separate Notification of Compliance Status report is not required within 150 days after the compliance dates specified in § 63.640(h). If an owner or operator submits the information specified in paragraphs (f)(1) through (5) of this section at different times, and/or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information. Each owner or operator of a gasoline loading rack classified under Standard Industrial Classification Code 2911 located within a contiguous area and under common control with a petroleum refinery subject to the standards of this subpart shall submit

the Notification of Compliance Status report required by subpart R of this part within 150 days after the compliance dates specified in § 63.640(h).

(1) The Notification of Compliance Status report shall include the information specified in paragraphs (f)(1)(i) through (viii) of this section.

(i) * * *

(A) Identification of each storage vessel subject to this subpart, and for each Group 1 storage vessel subject to this subpart, the information specified in paragraphs (f)(1)(i)(A)(1) through (3) of this section. This information is to be revised each time a Notification of Compliance Status report is submitted for a storage vessel subject to the compliance schedule specified in § 63.640(h)(2) or to comply with § 63.640(l)(3).

* * * * *

(2) For storage vessels subject to the compliance schedule specified in § 63.640(h)(2) that are not complying with § 63.646, the anticipated compliance date.

(3) For storage vessels subject to the compliance schedule specified in § 63.640(h)(2) that are complying with § 63.646 and the Group 1 storage vessels described in § 63.640(l), the actual compliance date.

(B) If a closed vent system and a control device other than a flare is used to comply with § 63.646 or § 63.660, the owner or operator shall submit:

* * * * *

(2) The design evaluation documentation specified in § 63.120(d)(1)(i) of subpart G or § 63.985(b)(1)(i) of subpart SS (as applicable), if the owner or operator elects to prepare a design evaluation; or

* * * * *

(D) * * *

(2) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.120(e) of subpart G or § 63.987(b) of subpart SS or § 63.670(h), as applicable; and

* * * * *

(iv) For miscellaneous process vents controlled by flares, initial compliance test results including the information in paragraphs (f)(1)(iv)(A) and (B) of this section.

(A) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by §§ 63.645 and 63.116(a) of subpart G or § 63.670(h), as applicable; and

* * * * *

(vii) For pressure relief devices in organic HAP service subject to the requirements in § 63.648(j)(3)(i) and (ii), this report shall include the information specified in paragraphs (f)(1)(vii)(A) and (B) of this section.

(A) A description of the monitoring system to be implemented, including the relief devices and process parameters to be monitored, and a description of the alarms or other methods by which operators will be notified of a pressure release.

(B) A description of the prevention measures to be implemented for each affected pressure relief device.

(viii) For each delayed coking unit, identification of whether the unit is an existing affected source or a new affected source and whether monitoring will be conducted as specified in § 63.657(b) or (c).

(2) If initial performance tests are required by §§ 63.643 through 63.653, the Notification of Compliance Status report shall include one complete test report for each test method used for a particular source. On and after February 1, 2016, performance tests shall be submitted according to paragraph (h)(9) of this section.

* * * * *

(3) For each monitored parameter for which a range is required to be established under § 63.120(d) of subpart G or § 63.985(b) of subpart SS for storage vessels or § 63.644 for miscellaneous process vents, the Notification of Compliance Status report shall include the information in paragraphs (f)(3)(i) through (iii) of this section.

* * * * *

(6) Notification of Compliance Status reports required by § 63.640(l)(3) and for storage vessels subject to the compliance dates specified in § 63.640(h)(2) shall be submitted no later than 60 days after the end of the 6-month period during which the change or addition was made that resulted in the Group 1 emission point or the existing Group 1 storage vessel was brought into compliance, and may be combined with the periodic report. * * *

(g) The owner or operator of a source subject to this subpart shall submit Periodic Reports no later than 60 days after the end of each 6-month period when any of the information specified in paragraphs (g)(1) through (7) of this section or paragraphs (g)(9) through (14) of this section is collected. The first 6-month period shall begin on the date the Notification of Compliance Status report is required to be submitted. A Periodic Report is not required if none of the events identified in paragraphs (g)(1)

through (7) of this section or paragraphs (g)(9) through (14) of this section occurred during the 6-month period unless emissions averaging is utilized. Quarterly reports must be submitted for emission points included in emission averages, as provided in paragraph (g)(8) of this section. An owner or operator may submit reports required by other regulations in place of or as part of the Periodic Report required by this paragraph (g) if the reports contain the information required by paragraphs (g)(1) through (14) of this section.

(1) For storage vessels, Periodic Reports shall include the information specified for Periodic Reports in paragraphs (g)(2) through (5) of this section. Information related to gaskets, slotted membranes, and sleeve seals is not required for storage vessels that are part of an existing source complying with § 63.646.

(2) *Internal floating roofs.* (i) An owner or operator who elects to comply with § 63.646 by using a fixed roof and an internal floating roof or by using an external floating roof converted to an internal floating roof shall submit the results of each inspection conducted in accordance with § 63.120(a) of subpart G in which a failure is detected in the control equipment.

(A) For vessels for which annual inspections are required under § 63.120(a)(2)(i) or (a)(3)(ii) of subpart G, the specifications and requirements listed in paragraphs (g)(2)(i)(A)(1) through (3) of this section apply.

(1) A failure is defined as any time in which the internal floating roof is not resting on the surface of the liquid inside the storage vessel and is not resting on the leg supports; or there is liquid on the floating roof; or the seal is detached from the internal floating roof; or there are holes, tears, or other openings in the seal or seal fabric; or there are visible gaps between the seal and the wall of the storage vessel.

(2) Except as provided in paragraph (g)(2)(i)(A)(3) of this section, each Periodic Report shall include the date of the inspection, identification of each storage vessel in which a failure was detected, and a description of the failure. The Periodic Report shall also describe the nature of and date the repair was made or the date the storage vessel was emptied.

(3) If an extension is utilized in accordance with § 63.120(a)(4) of subpart G, the owner or operator shall, in the next Periodic Report, identify the vessel; include the documentation specified in § 63.120(a)(4) of subpart G; and describe the date the storage vessel was emptied and the nature of and date the repair was made.

(B) For vessels for which inspections are required under § 63.120(a)(2)(ii), (a)(3)(i), or (a)(3)(iii) of subpart G (*i.e.*, internal inspections), the specifications and requirements listed in paragraphs (g)(2)(i)(B)(1) and (2) of this section apply.

(1) A failure is defined as any time in which the internal floating roof has defects; or the primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric; or, for a storage vessel that is part of a new source, the gaskets no longer close off the liquid surface from the atmosphere; or, for a storage vessel that is part of a new source, the slotted membrane has more than a 10 percent open.

(2) Each Periodic Report shall include the date of the inspection, identification of each storage vessel in which a failure was detected, and a description of the failure. The Periodic Report shall also describe the nature of and date the repair was made.

(ii) An owner or operator who elects to comply with § 63.660 by using a fixed roof and an internal floating roof shall submit the results of each inspection conducted in accordance with § 63.1063(c)(1), (d)(1), and (d)(2) of subpart WW in which a failure is detected in the control equipment. For vessels for which inspections are required under § 63.1063(c) and (d), the specifications and requirements listed in paragraphs (g)(2)(ii)(A) through (C) of this section apply.

(A) A failure is defined in § 63.1063(d)(1) of subpart WW.

(B) Each Periodic Report shall include a copy of the inspection record required by § 63.1065(b) of subpart WW when a failure occurs.

(C) An owner or operator who elects to use an extension in accordance with § 63.1063(e)(2) of subpart WW shall, in the next Periodic Report, submit the documentation required by § 63.1063(e)(2).

(3) *External floating roofs.* (i) An owner or operator who elects to comply with § 63.646 by using an external floating roof shall meet the periodic reporting requirements specified in paragraphs (g)(3)(i)(A) through (C) of this section.

(A) The owner or operator shall submit, as part of the Periodic Report, documentation of the results of each seal gap measurement made in accordance with § 63.120(b) of subpart G in which the seal and seal gap requirements of § 63.120(b)(3), (4), (5), or (6) of subpart G are not met. This documentation shall include the

information specified in paragraphs (g)(3)(i)(A)(1) through (4) of this section.

(1) The date of the seal gap measurement.

(2) The raw data obtained in the seal gap measurement and the calculations described in § 63.120(b)(3) and (4) of subpart G.

(3) A description of any seal condition specified in § 63.120(b)(5) or (6) of subpart G that is not met.

(4) A description of the nature of and date the repair was made, or the date the storage vessel was emptied.

(B) If an extension is utilized in accordance with § 63.120(b)(7)(ii) or (b)(8) of subpart G, the owner or operator shall, in the next Periodic Report, identify the vessel; include the documentation specified in § 63.120(b)(7)(ii) or (b)(8) of subpart G, as applicable; and describe the date the vessel was emptied and the nature of and date the repair was made.

(C) The owner or operator shall submit, as part of the Periodic Report, documentation of any failures that are identified during visual inspections required by § 63.120(b)(10) of subpart G. This documentation shall meet the specifications and requirements in paragraphs (g)(3)(i)(C)(1) and (2) of this section.

(1) A failure is defined as any time in which the external floating roof has defects; or the primary seal has holes or other openings in the seal or the seal fabric; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric; or, for a storage vessel that is part of a new source, the gaskets no longer close off the liquid surface from the atmosphere; or, for a storage vessel that is part of a new source, the slotted membrane has more than 10 percent open area.

(2) Each Periodic Report shall include the date of the inspection, identification of each storage vessel in which a failure was detected, and a description of the failure. The Periodic Report shall also describe the nature of and date the repair was made.

(ii) An owner or operator who elects to comply with § 63.660 by using an external floating roof shall meet the periodic reporting requirements specified in paragraphs (g)(3)(ii)(A) and (B) of this section.

(A) For vessels for which inspections are required under § 63.1063(c)(2), (d)(1), and (d)(3) of subpart WW, the owner or operator shall submit, as part of the Periodic Report, a copy of the inspection record required by § 63.1065(b) of subpart WW when a failure occurs. A failure is defined in § 63.1063(d)(1).

(B) An owner or operator who elects to use an extension in accordance with § 63.1063(e)(2) or (c)(2)(iv)(B) of subpart WW shall, in the next Periodic Report, submit the documentation required by those paragraphs.

(4) [Reserved]

(5) An owner or operator who elects to comply with § 63.646 or § 63.660 by installing a closed vent system and control device shall submit, as part of the next Periodic Report, the information specified in paragraphs (g)(5)(i) through (v) of this section, as applicable.

(i) The Periodic Report shall include the information specified in paragraphs (g)(5)(i)(A) and (B) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of either § 63.119(e)(1) or (2) of subpart G, § 63.985(a) and (b) of subpart SS, or § 63.670, as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6 months. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6 months. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of either § 63.119(e)(1) or (2) of subpart G, § 63.985(a) and (b) of subpart SS, or § 63.670, as applicable, due to planned routine maintenance.

(ii) If a control device other than a flare is used, the Periodic Report shall describe each occurrence when the monitored parameters were outside of the parameter ranges documented in the Notification of Compliance Status report. The description shall include: Identification of the control device for which the measured parameters were outside of the established ranges, and causes for the measured parameters to be outside of the established ranges.

(iii) If a flare is used prior to January 30, 2019 and prior to electing to comply with the requirements in § 63.670, the Periodic Report shall describe each occurrence when the flare does not meet the general control device requirements specified in § 63.11(b) of subpart A and shall include: Identification of the flare that does not meet the general requirements specified in § 63.11(b) of subpart A, and reasons the flare did not meet the general requirements specified in § 63.11(b) of subpart A.

(iv) If a flare is used on or after the date for which compliance with the requirements in § 63.670 is elected, which can be no later than January 30, 2019, the Periodic Report shall include the items specified in paragraph (g)(11) of this section.

(v) An owner or operator who elects to comply with § 63.660 by installing an alternate control device as described in § 63.1064 of subpart WW shall submit, as part of the next Periodic Report, a written application as described in § 63.1066(b)(3) of subpart WW.

(6) * * *

(i) * * *

(D) For data compression systems under paragraph (h)(5)(iii) of this section, an operating day when the monitor operated for less than 75 percent of the operating hours or a day when less than 18 monitoring values were recorded.

* * * * *

(iii) For periods in closed vent systems when a Group 1 miscellaneous process vent stream was detected in the bypass line or diverted from the control device and either directly to the atmosphere or to a control device that does not comply with the requirements in § 63.643(a), report the date, time, duration, estimate of the volume of gas, the concentration of organic HAP in the gas and the resulting mass emissions of organic HAP that bypassed the control device. For periods when the flow indicator is not operating, report the date, time, and duration.

(7) * * *

(i) Results of the performance test shall include the identification of the source tested, the date of the test, the percentage of emissions reduction or outlet pollutant concentration reduction (whichever is needed to determine compliance) for each run and for the average of all runs, and the values of the monitored operating parameters.

* * * * *

(10) For pressure relief devices subject to the requirements § 63.648(j), Periodic Reports must include the information specified in paragraphs (g)(10)(i) through (iii) of this section.

(i) For pressure relief devices in organic HAP gas or vapor service, pursuant to § 63.648(j)(1), report any instrument reading of 500 ppm or greater.

(ii) For pressure relief devices in organic HAP gas or vapor service subject to § 63.648(j)(2), report confirmation that any monitoring required to be done during the reporting period to show compliance was conducted.

(iii) For pressure relief devices in organic HAP service subject to

§ 63.648(j)(3), report each pressure release to the atmosphere, including duration of the pressure release and estimate of the mass quantity of each organic HAP released, and the results of any root cause analysis and corrective action analysis completed during the reporting period, including the corrective actions implemented during the reporting period and, if applicable, the implementation schedule for planned corrective actions to be implemented subsequent to the reporting period.

(11) For flares subject to § 63.670, Periodic Reports must include the information specified in paragraphs (g)(11)(i) through (iv) of this section.

(i) Records as specified in paragraph (i)(9)(i) of this section for each 15-minute block during which there was at least one minute when regulated material is routed to a flare and no pilot flame is present.

(ii) Visible emission records as specified in paragraph (i)(9)(ii)(C) of this section for each period of 2 consecutive hours during which visible emissions exceeded a total of 5 minutes.

(iii) The 15-minute block periods for which the applicable operating limits specified in § 63.670(d) through (f) are not met. Indicate the date and time for the period, the net heating value operating parameter(s) determined following the methods in § 63.670(k) through (n) as applicable.

(iv) For flaring events meeting the criteria in § 63.670(o)(3):

(A) The start and stop time and date of the flaring event.

(B) The length of time for which emissions were visible from the flare during the event.

(C) The periods of time that the flare tip velocity exceeds the maximum flare tip velocity determined using the methods in § 63.670(d)(2) and the maximum 15-minute block average flare tip velocity recorded during the event.

(D) Results of the root cause and corrective actions analysis completed during the reporting period, including the corrective actions implemented during the reporting period and, if applicable, the implementation schedule for planned corrective actions to be implemented subsequent to the reporting period.

(12) For delayed coking units, the Periodic Report must include the information specified in paragraphs (g)(12)(i) through (iv) of this section.

(i) For existing source delayed coking units, any 60-cycle average exceeding the applicable limit in § 63.657(a)(1).

(ii) For new source delayed coking units, any direct venting event

exceeding the applicable limit in § 63.657(a)(2).

(iii) The total number of double quenching events performed during the reporting period.

(iv) For each double quenching draining event when the drain water temperature exceeded 210 °F, report the drum, date, time, the coke drum vessel pressure or temperature, as applicable, when pre-vent draining was initiated, and the maximum drain water temperature during the pre-vent draining period.

(13) For maintenance vents subject to the requirements in § 63.643(c), Periodic Reports must include the information specified in paragraphs (g)(13)(i) through (iv) of this section for any release exceeding the applicable limits in § 63.643(c)(1). For the purposes of this reporting requirement, owners or operators complying with § 63.643(c)(1)(iv) must report each venting event for which the lower explosive limit is 20 percent or greater.

(i) Identification of the maintenance vent and the equipment served by the maintenance vent.

(ii) The date and time the maintenance vent was opened to the atmosphere.

(iii) The lower explosive limit, vessel pressure, or mass of VOC in the equipment, as applicable, at the start of atmospheric venting. If the 5 psig vessel pressure option in § 63.643(c)(1)(ii) was used and active purging was initiated while the lower explosive limit was 10 percent or greater, also include the lower explosive limit of the vapors at the time active purging was initiated.

(iv) An estimate of the mass of organic HAP released during the entire atmospheric venting event.

(14) Any changes in the information provided in a previous Notification of Compliance Status report.

(h) * * *

(2) For storage vessels, notifications of inspections as specified in paragraphs (h)(2)(i) and (ii) of this section.

(i) * * *

(B) Except as provided in paragraph (h)(2)(i)(C) of this section, if the internal inspection required by § 63.120(a)(2), (a)(3), or (b)(10) of subpart G or § 63.1063(d)(1) of subpart WW is not planned and the owner or operator could not have known about the inspection 30 calendar days in advance of refilling the vessel with organic HAP, the owner or operator shall notify the Administrator at least 7 calendar days prior to refilling of the storage vessel. Notification may be made by telephone and immediately followed by written documentation demonstrating why the inspection was unplanned. This

notification, including the written documentation, may also be made in writing and sent so that it is received by the Administrator at least 7 calendar days prior to the refilling.

* * * * *

(ii) In order to afford the Administrator the opportunity to have an observer present, the owner or operator of a storage vessel equipped with an external floating roof shall notify the Administrator of any seal gap measurements. The notification shall be made in writing at least 30 calendar days in advance of any gap measurements required by § 63.120(b)(1) or (2) of subpart G or § 63.1062(d)(3) of subpart WW. The State or local permitting authority can waive this notification requirement for all or some storage vessels subject to the rule or can allow less than 30 calendar days' notice.

* * * * *

(5) * * *

(iii) An owner or operator may use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every hour) but records all values that meet set criteria for variation from previously recorded values.

(A) The system shall be designed to:

(1) Measure the operating parameter value at least once every hour.

(2) Record at least 24 values each day during periods of operation.

(3) Record the date and time when monitors are turned off or on.

(4) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident.

(5) Compute daily average values of the monitored operating parameter based on recorded data.

(B) You must maintain a record of the description of the monitoring system and data compression recording system including the criteria used to determine which monitored values are recorded and retained, the method for calculating daily averages, and a demonstration that they system meets all criteria of paragraph (h)(5)(iii)(A) of this section.

* * * * *

(8) For fenceline monitoring systems subject to § 63.658, within 45 calendar days after the end of each quarterly reporting period covered by the periodic report, each owner or operator shall submit the following information to the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The owner or operator need not transmit this data prior to obtaining 12 months of data.

(i) Individual sample results for each monitor for each sampling period during the quarterly reporting period. For the first reporting period and for any period in which a passive monitor is added or moved, the owner or operator shall report the coordinates of all of the passive monitor locations. The owner or operator shall determine the coordinates using an instrument with an accuracy of at least 3 meters. Coordinates shall be in decimal degrees with at least five decimal places.

(ii) The biweekly annual average concentration difference (Δc) values for benzene for the quarterly reporting period.

(iii) Notation for each biweekly value that indicates whether background correction was used, all measurements in the sampling period were below detection, or whether an outlier was removed from the sampling period data set.

(9) On and after February 1, 2016, if required to submit the results of a performance test or CEMS performance evaluation, the owner or operator shall submit the results according to the procedures in paragraphs (h)(9)(i) and (ii) of this section.

(i) Within 60 days after the date of completing each performance test as required by this subpart, the owner or operator shall submit the results of the performance tests following the procedure specified in either paragraph (h)(9)(i)(A) or (B) of this section.

(A) 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, the owner or operator must submit the results of the performance test to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site. If an owner or operator claims that some of the performance test information being submitted is confidential business information (CBI), the owner or operator 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, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic storage media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/

CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (h)(9)(i)(A).

(B) 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, the owner or operator must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

(ii) Within 60 days after the date of completing each CEMS performance evaluation as required by this subpart, the owner or operator must submit the results of the performance evaluation following the procedure specified in either paragraph (h)(9)(ii)(A) or (B) of this section.

(A) For performance evaluations of continuous monitoring systems measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, the owner or operator must submit the results of the performance evaluation to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) Performance evaluation data must be submitted in a file format generated through the use of the EPA's ERT or an alternate file format consistent with the XML schema listed on the EPA's ERT Web site. If an owner or operator claims that some of the performance evaluation information being submitted is CBI, the owner or operator 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, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic storage media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (h)(9)(ii)(A).

(B) For any performance evaluations of continuous monitoring systems measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, the owner or operator must submit the results of the

performance evaluation to the Administrator at the appropriate address listed in § 63.13.

(i) *Recordkeeping.* Each owner or operator of a source subject to this subpart shall keep copies of all applicable reports and records required by this subpart for at least 5 years except as otherwise specified in paragraphs (i)(1) through (12) of this section. All applicable records shall be maintained in such a manner that they can be readily accessed within 24 hours. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, flash drive, floppy disk, magnetic tape, or microfiche.

(1) Each owner or operator subject to the storage vessel provisions in § 63.646 shall keep the records specified in § 63.123 of subpart G except as specified in paragraphs (i)(1)(i) through (iv) of this section. Each owner or operator subject to the storage vessel provisions in § 63.660 shall keep records as specified in paragraphs (i)(1)(v) and (vi) of this section.

* * * * *

(ii) All references to § 63.122 in § 63.123 of subpart G shall be replaced with § 63.655(e).

* * * * *

(v) Each owner or operator of a Group 1 storage vessel subject to the provisions in § 63.660 shall keep records as specified in § 63.1065 or § 63.998, as applicable.

(vi) Each owner or operator of a Group 2 storage vessel shall keep the records specified in § 63.1065(a) of subpart WW. If a storage vessel is determined to be Group 2 because the weight percent total organic HAP of the stored liquid is less than or equal to 4 percent for existing sources or 2 percent for new sources, a record of any data, assumptions, and procedures used to make this determination shall be retained.

* * * * *

(4) For each closed vent system that contains bypass lines that could divert a vent stream away from the control device and either directly to the atmosphere or to a control device that does not comply with the requirements in § 63.643(a), the owner or operator shall keep a record of the information specified in either paragraph (i)(4)(i) or (ii) of this section, as applicable.

(i) The owner or operator shall maintain records of periods when flow was detected in the bypass line, including the date and time and the duration of the flow in the bypass line. For each flow event, the owner or operator shall maintain records

sufficient to determine whether or not the detected flow included flow of a Group 1 miscellaneous process vent stream requiring control. For periods when the Group 1 miscellaneous process vent stream requiring control is diverted from the control device and released either directly to the atmosphere or to a control device that does not comply with the requirements in § 63.643(a), the owner or operator shall include an estimate of the volume of gas, the concentration of organic HAP in the gas and the resulting emissions of organic HAP that bypassed the control device using process knowledge and engineering estimates.

(ii) Where a seal mechanism is used to comply with § 63.644(c)(2), hourly records of flow are not required. In such cases, the owner or operator shall record the date that the monthly visual inspection of the seals or closure mechanisms is completed. The owner or operator shall also record the occurrence of all periods when the seal or closure mechanism is broken, the bypass line valve position has changed or the key for a lock-and-key type lock has been checked out. The owner or operator shall include an estimate of the volume of gas, the concentration of organic HAP in the gas and the resulting mass emissions of organic HAP from the Group 1 miscellaneous process vent stream requiring control that bypassed the control device or records sufficient to demonstrate that there was no flow of a Group 1 miscellaneous process vent stream requiring control during the period.

(5) The owner or operator of a heat exchange system subject to this subpart shall comply with the recordkeeping requirements in paragraphs (i)(5)(i) through (v) of this section and retain these records for 5 years.

* * * * *

(7) Each owner or operator subject to the delayed coking unit decoking operations provisions in § 63.657 must maintain records specified in paragraphs (i)(7)(i) through (iii) of this section.

(i) The average pressure or temperature, as applicable, for the 5-minute period prior to venting to the atmosphere, draining, or deheading the coke drum for each cooling cycle for each coke drum.

(ii) If complying with the 60-cycle rolling average, each 60-cycle rolling average pressure or temperature, as applicable, considering all coke drum venting events in the existing affected source.

(iii) For double-quench cooling cycles:

(A) The date, time and duration of each pre-vent draining event.

(B) The pressure or temperature of the coke drum vessel, as applicable, for the 15 minute period prior to the pre-vent draining.

(C) The drain water temperature at 1-minute intervals from the start of pre-vent draining to the complete closure of the drain valve.

(8) For fenceline monitoring systems subject to § 63.658, each owner or operator shall keep the records specified in paragraphs (i)(8)(i) through (x) of this section on an ongoing basis.

(i) Coordinates of all passive monitors, including replicate samplers and field blanks, and if applicable, the meteorological station. The owner or operator shall determine the coordinates using an instrument with an accuracy of at least 3 meters. The coordinates shall be in decimal degrees with at least five decimal places.

(ii) The start and stop times and dates for each sample, as well as the tube identifying information.

(iii) Sampling period average temperature and barometric pressure measurements.

(iv) For each outlier determined in accordance with Section 9.2 of Method 325A of appendix A of this part, the sampler location of and the concentration of the outlier and the evidence used to conclude that the result is an outlier.

(v) For samples that will be adjusted for a background, the location of and the concentration measured simultaneously by the background sampler, and the perimeter samplers to which it applies.

(vi) Individual sample results, the calculated Δc for benzene for each sampling period and the two samples used to determine it, whether background correction was used, and the annual average Δc calculated after each sampling period.

(vii) Method detection limit for each sample, including co-located samples and blanks.

(viii) Documentation of corrective action taken each time the action level was exceeded.

(ix) Other records as required by Methods 325A and 325B of appendix A of this part.

(x) If a near-field source correction is used as provided in § 63.658(i), records of hourly meteorological data, including temperature, barometric pressure, wind speed and wind direction, calculated daily unit vector wind direction and daily sigma theta, and other records specified in the site-specific monitoring plan.

(9) For each flare subject to § 63.670, each owner or operator shall keep the

records specified in paragraphs (i)(9)(i) through (xii) of this section up-to-date and readily accessible, as applicable.

(i) Retain records of the output of the monitoring device used to detect the presence of a pilot flame as required in § 63.670(b) for a minimum of 2 years. Retain records of each 15-minute block during which there was at least one minute that no pilot flame is present when regulated material is routed to a flare for a minimum of 5 years.

(ii) Retain records of daily visible emissions observations or video surveillance images required in § 63.670(h) as specified in the paragraphs (i)(9)(ii)(A) through (C), as applicable, for a minimum of 3 years.

(A) If visible emissions observations are performed using Method 22 at 40 CFR part 60, appendix A–7, the record must identify whether the visible emissions observation was performed, the results of each observation, total duration of observed visible emissions, and whether it was a 5-minute or 2-hour observation. If the owner or operator performs visible emissions observations more than one time during a day, the record must also identify the date and time of day each visible emissions observation was performed.

(B) If video surveillance camera is used, the record must include all video surveillance images recorded, with time and date stamps.

(C) For each 2 hour period for which visible emissions are observed for more than 5 minutes in 2 consecutive hours, the record must include the date and time of the 2 hour period and an estimate of the cumulative number of minutes in the 2 hour period for which emissions were visible.

(iii) The 15-minute block average cumulative flows for flare vent gas and, if applicable, total steam, perimeter assist air, and premix assist air specified to be monitored under § 63.670(i), along with the date and time interval for the 15-minute block. If multiple monitoring locations are used to determine cumulative vent gas flow, total steam, perimeter assist air, and premix assist air, retain records of the 15-minute block average flows for each monitoring location for a minimum of 2 years, and retain the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years. If pressure and temperature monitoring is used, retain records of the 15-minute block average temperature, pressure and molecular weight of the flare vent gas or assist gas stream for each measurement location used to determine the 15-minute block average cumulative flows for a minimum of 2 years, and retain the 15-minute block

average cumulative flows that are used in subsequent calculations for a minimum of 5 years.

(iv) The flare vent gas compositions specified to be monitored under § 63.670(j). Retain records of individual component concentrations from each compositional analyses for a minimum of 2 years. If NHHV analyzer is used, retain records of the 15-minute block average values for a minimum of 5 years.

(v) Each 15-minute block average operating parameter calculated following the methods specified in § 63.670(k) through (n), as applicable.

(vi) [Reserved]

(vii) All periods during which operating values are outside of the applicable operating limits specified in § 63.670(d) through (f) when regulated material is being routed to the flare.

(viii) All periods during which the owner or operator does not perform flare monitoring according to the procedures in § 63.670(g) through (j).

(ix) Records of periods when there is flow of vent gas to the flare, but when there is no flow of regulated material to the flare, including the start and stop time and dates of periods of no regulated material flow.

(x) Records when the flow of vent gas exceeds the smokeless capacity of the flare, including start and stop time and dates of the flaring event.

(xi) Records of the root cause analysis and corrective action analysis conducted as required in § 63.670(o)(3), including an identification of the affected facility, the date and duration of the event, a statement noting whether the event resulted from the same root cause(s) identified in a previous analysis and either a description of the recommended corrective action(s) or an explanation of why corrective action is not necessary under § 63.670(o)(5)(i).

(xii) For any corrective action analysis for which implementation of corrective actions are required in § 63.670(o)(5), a description of the corrective action(s) completed within the first 45 days following the discharge and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(10) [Reserved]

(11) For each pressure relief device subject to the pressure release management work practice standards in § 63.648(j)(3), the owner or operator shall keep the records specified in paragraphs (i)(11)(i) through (iii) of this section.

(i) Records of the prevention measures implemented as required in § 63.648(j)(3)(ii), if applicable.

(ii) Records of the number of releases during each calendar year and the number of those releases for which the root cause was determined to be a force majeure event. Keep these records for the current calendar year and the past five calendar years.

(iii) For each release to the atmosphere, the owner or operator shall keep the records specified in paragraphs (i)(11)(iii)(A) through (D) of this section.

(A) The start and end time and date of each pressure release to the atmosphere.

(B) Records of any data, assumptions, and calculations used to estimate of the mass quantity of each organic HAP released during the event.

(C) Records of the root cause analysis and corrective action analysis conducted as required in § 63.648(j)(3)(iii), including an identification of the affected facility, the date and duration of the event, a statement noting whether the event resulted from the same root cause(s) identified in a previous analysis and either a description of the recommended corrective action(s) or an explanation of why corrective action is not necessary under § 63.648(j)(7)(i).

(D) For any corrective action analysis for which implementation of corrective actions are required in § 63.648(j)(7), a description of the corrective action(s) completed within the first 45 days following the discharge and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(12) For each maintenance vent opening subject to the requirements in § 63.643(c), the owner or operator shall keep the applicable records specified in (i)(12)(i) through (v) of this section.

(i) The owner or operator shall maintain standard site procedures used to deinventory equipment for safety purposes (*e.g.*, hot work or vessel entry procedures) to document the procedures used to meet the requirements in § 63.643(c). The current copy of the procedures shall be retained and available on-site at all times. Previous versions of the standard site procedures, if applicable, shall be retained for five years.

(ii) If complying with the requirements of § 63.643(c)(1)(i) and the lower explosive limit at the time of the vessel opening exceeds 10 percent, identification of the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, and the lower explosive limit at the time of the vessel opening.

(iii) If complying with the requirements of § 63.643(c)(1)(ii) and either the vessel pressure at the time of the vessel opening exceeds 5 psig or the lower explosive limit at the time of the active purging was initiated exceeds 10 percent, identification of the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, the pressure of the vessel or equipment at the time of discharge to the atmosphere and, if applicable, the lower explosive limit of the vapors in the equipment when active purging was initiated.

(iv) If complying with the requirements of § 63.643(c)(1)(iii), identification of the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, and records used to estimate the total quantity of VOC in the equipment at the time the maintenance vent was opened to the atmosphere for each applicable maintenance vent opening.

(v) If complying with the requirements of § 63.643(c)(1)(iv), identification of the maintenance vent, the process units or equipment associated with the maintenance vent, records documenting the lack of a pure hydrogen supply, the date of maintenance vent opening, and the lower explosive limit of the vapors in the equipment at the time of discharge to the atmosphere for each applicable maintenance vent opening.

■ 28. Section 63.656 is amended by revising paragraph (c)(1) to read as follows:

§ 63.656 Implementation and enforcement.

* * * * *

(c) * * *

(1) Approval of alternatives to the requirements in §§ 63.640, 63.642(g) through (l), 63.643, 63.646 through 63.652, 63.654, 63.657 through 63.660, and 63.670. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart. Where these standards reference another subpart and modify the requirements, the requirements shall be modified as described in this subpart. Delegation of the modified requirements will also occur according to the delegation provisions of the referenced subpart.

* * * * *

■ 29. Section 63.657 is added to read as follows:

§ 63.657 Delayed coking unit decoking operation standards.

(a) Except as provided in paragraphs (e) and (f) of this section, each owner or operator of a delayed coking unit shall depressure each coke drum to a closed blowdown system until the coke drum vessel pressure or temperature measured at the top of the coke drum or in the overhead line of the coke drum as near as practical to the coke drum meets the applicable limits specified in paragraph (a)(1) or (2) of this section prior to venting to the atmosphere, draining or deheading the coke drum at the end of the cooling cycle.

(1) For delayed coking units at an existing affected source, meet either:

(i) An average vessel pressure of 2 psig determined on a rolling 60-event average; or

(ii) An average vessel temperature of 220 degrees Fahrenheit determined on a rolling 60-event average.

(2) For delayed coking units at a new affected source, meet either:

(i) A vessel pressure of 2.0 psig for each decoking event; or

(ii) A vessel temperature of 218 degrees Fahrenheit for each decoking event.

(b) Each owner or operator of a delayed coking unit complying with the pressure limits in paragraph (a)(1)(i) or (a)(2)(i) of this section shall install, operate, calibrate, and maintain a monitoring system, as specified in paragraphs (b)(1) through (5) of this section, to determine the coke drum vessel pressure.

(1) The pressure monitoring system must be in a representative location (at the top of the coke drum or in the overhead line as near as practical to the coke drum) that minimizes or eliminates pulsating pressure, vibration, and, to the extent practical, internal and external corrosion.

(2) The pressure monitoring system must be capable of measuring a pressure of 2.0 psig within ± 0.5 psig.

(3) The pressure monitoring system must be verified annually or at the frequency recommended by the instrument manufacturer. The pressure monitoring system must be verified following any period of more than 24 hours throughout which the pressure exceeded the maximum rated pressure of the sensor, or the data recorder was off scale.

(4) All components of the pressure monitoring system must be visually inspected for integrity, oxidation and galvanic corrosion every 3 months, unless the system has a redundant pressure sensor.

(5) The output of the pressure monitoring system must be reviewed

daily to ensure that the pressure readings fluctuate as expected between operating and cooling/decooking cycles to verify the pressure taps are not plugged. Plugged pressure taps must be unplugged or otherwise repaired prior to the next operating cycle.

(c) Each owner or operator of a delayed coking unit complying with the temperature limits in paragraph (a)(1)(ii) or (a)(2)(ii) of this section shall install, operate, calibrate, and maintain a continuous parameter monitoring system to measure the coke drum vessel temperature (at the top of the coke drum or in the overhead line as near as practical to the coke drum) according to the requirements specified in table 13 of this subpart.

(d) The owner or operator of a delayed coking unit shall determine the coke drum vessel pressure or temperature, as applicable, on a 5-minute rolling average basis while the coke drum is vented to the closed blowdown system and shall use the last complete 5-minute rolling average pressure or temperature just prior to initiating steps to isolate the coke drum prior to venting, draining or deheading to demonstrate compliance with the requirements in paragraph (a) of this section. Pressure or temperature readings after initiating steps to isolate the coke drum from the closed blowdown system just prior to atmospheric venting, draining, or deheading the coke drum shall not be used in determining the average coke drum vessel pressure or temperature for the purpose of compliance with the requirements in paragraph (a) of this section.

(e) The owner or operator of a delayed coking unit using the "water overflow" method of coke cooling must hardpipe the overflow water or otherwise prevent exposure of the overflow water to the atmosphere when transferring the overflow water to the overflow water storage tank whenever the coke drum vessel temperature exceeds 220 degrees Fahrenheit. The overflow water storage tank may be an open or fixed-roof tank provided that a submerged fill pipe (pipe outlet below existing liquid level in the tank) is used to transfer overflow water to the tank. The owner or operator of a delayed coking unit using the "water overflow" method of coke cooling shall determine the coke drum vessel temperature as specified in paragraphs (c) and (d) of this section regardless of the compliance method used to demonstrate compliance with the requirements in paragraph (a) of this section.

(f) The owner or operator of a delayed coking unit may partially drain a coke drum prior to achieving the applicable

limits in paragraph (a) of this section in order to double-quench a coke drum that did not cool adequately using the normal cooling process steps provided that the owner or operator meets the conditions in paragraphs (f)(1) and (2) of this section.

(1) The owner or operator shall install, operate, calibrate, and maintain a continuous parameter monitoring system to measure the drain water temperature at the bottom of the coke drum or in the drain line as near as practical to the coke drum according to the requirements specified in table 13 of this subpart.

(2) The owner or operator must maintain the drain water temperature below 210 degrees Fahrenheit during the partial drain associated with the double-quench event.

■ 30. Section 63.658 is added to read as follows:

§ 63.658 Fenceline monitoring provisions.

(a) The owner or operator shall conduct sampling along the facility property boundary and analyze the samples in accordance with Methods 325A and 325B of appendix A of this part and paragraphs (b) through (k) of this section.

(b) The target analyte is benzene.

(c) The owner or operator shall determine passive monitor locations in accordance with Section 8.2 of Method 325A of appendix A of this part.

(1) As it pertains to this subpart, known sources of VOCs, as used in Section 8.2.1.3 in Method 325A of appendix A of this part for siting passive monitors means a wastewater treatment unit, process unit, or any emission source requiring control according to the requirements of this subpart, including marine vessel loading operations. For marine loading operations that are located offshore, one passive monitor should be sited on the shoreline adjacent to the dock.

(2) The owner or operator may collect one or more background samples if the owner or operator believes that an offsite upwind source or an onsite source excluded under § 63.640(g) may influence the sampler measurements. If the owner or operator elects to collect one or more background samples, the owner or operator must develop and submit a site-specific monitoring plan for approval according to the requirements in paragraph (i) of this section. Upon approval of the site-specific monitoring plan, the background sampler(s) should be operated co-currently with the routine samplers.

(3) The owner or operator shall collect at least one co-located duplicate sample

for every 10 field samples per sampling period and at least two field blanks per sampling period, as described in Section 9.3 in Method 325A of appendix A of this part. The co-located duplicates may be collected at any one of the perimeter sampling locations.

(4) The owner or operator shall follow the procedure in Section 9.6 of Method 325B of appendix A of this part to determine the detection limit of benzene for each sampler used to collect samples, background samples (if the owner or operator elects to do so), co-located samples and blanks.

(d) The owner or operator shall collect and record meteorological data according to the applicable requirements in paragraphs (d)(1) through (3) of this section.

(1) If a near-field source correction is used as provided in paragraph (i)(1) of this section or if an alternative test method is used that provides time-resolved measurements, the owner or operator shall:

(i) Use an on-site meteorological station in accordance with Section 8.3 of Method 325A of appendix A of this part.

(ii) Collect and record hourly average meteorological data, including temperature, barometric pressure, wind speed and wind direction and calculate daily unit vector wind direction and daily sigma theta.

(2) For cases other than those specified in paragraph (d)(1) of this section, the owner or operator shall collect and record sampling period average temperature and barometric pressure using either an on-site meteorological station in accordance with Section 8.3 of Method 325A of appendix A of this part or, alternatively, using data from a United States Weather Service (USWS) meteorological station provided the USWS meteorological station is within 40 kilometers (25 miles) of the refinery.

(3) If an on-site meteorological station is used, the owner or operator shall follow the calibration and standardization procedures for meteorological measurements in EPA-454/B-08-002 (incorporated by reference—see § 63.14).

(e) The owner or operator shall use a sampling period and sampling frequency as specified in paragraphs (e)(1) through (3) of this section.

(1) *Sampling period.* A 14-day sampling period shall be used, unless a shorter sampling period is determined to be necessary under paragraph (g) or (i) of this section. A sampling period is defined as the period during which sampling tube is deployed at a specific sampling location with the diffusive

sampling end cap in-place and does not include the time required to analyze the sample. For the purpose of this subpart, a 14-day sampling period may be no shorter than 13 calendar days and no longer than 15 calendar days, but the routine sampling period shall be 14 calendar days.

(2) *Base sampling frequency.* Except as provided in paragraph (e)(3) of this section, the frequency of sample collection shall be once each contiguous 14-day sampling period, such that the beginning of the next 14-day sampling period begins immediately upon the completion of the previous 14-day sampling period.

(3) *Alternative sampling frequency for burden reduction.* When an individual monitor consistently achieves results at or below $0.9 \mu\text{g}/\text{m}^3$, the owner or operator may elect to use the applicable minimum sampling frequency specified in paragraphs (e)(3)(i) through (v) of this section for that monitoring site. When calculating Δc for the monitoring period when using this alternative for burden reduction, zero shall be substituted for the sample result for the monitoring site for any period where a sample is not taken.

(i) If every sample at a monitoring site is at or below $0.9 \mu\text{g}/\text{m}^3$ for 2 years (52 consecutive samples), every other sampling period can be skipped for that monitoring site, *i.e.*, sampling will occur approximately once per month.

(ii) If every sample at a monitoring site that is monitored at the frequency specified in paragraph (e)(3)(i) of this section is at or below $0.9 \mu\text{g}/\text{m}^3$ for 2 years (*i.e.*, 26 consecutive "monthly" samples), five 14-day sampling periods can be skipped for that monitoring site following each period of sampling, *i.e.*, sampling will occur approximately once per quarter.

(iii) If every sample at a monitoring site that is monitored at the frequency specified in paragraph (e)(3)(ii) of this section is at or below $0.9 \mu\text{g}/\text{m}^3$ for 2 years (*i.e.*, 8 consecutive quarterly samples), twelve 14-day sampling periods can be skipped for that monitoring site following each period of sampling, *i.e.*, sampling will occur twice a year.

(iv) If every sample at a monitoring site that is monitored at the frequency specified in paragraph (e)(3)(iii) of this section is at or below $0.9 \mu\text{g}/\text{m}^3$ for an 2 years (*i.e.*, 4 consecutive semi-annual samples), only one sample per year is required for that monitoring site. For yearly sampling, samples shall occur at least 10 months but no more than 14 months apart.

(v) If at any time a sample for a monitoring site that is monitored at the

frequency specified in paragraphs (e)(3)(i) through (iv) of this section returns a result that is above $0.9 \mu\text{g}/\text{m}^3$, the sampling site must return to the original sampling requirements of contiguous 14-day sampling periods with no skip periods for one quarter (six 14-day sampling periods). If every sample collected during this quarter is at or below $0.9 \mu\text{g}/\text{m}^3$, the owner or operator may revert back to the reduced monitoring schedule applicable for that monitoring site prior to the sample reading exceeding $0.9 \mu\text{g}/\text{m}^3$. If any sample collected during this quarter is above $0.9 \mu\text{g}/\text{m}^3$, that monitoring site must return to the original sampling requirements of contiguous 14-day sampling periods with no skip periods for a minimum of two years. The burden reduction requirements can be used again for that monitoring site once the requirements of paragraph (e)(3)(i) of this section are met again, *i.e.*, after 52 contiguous 14-day samples with no results above $0.9 \mu\text{g}/\text{m}^3$.

(f) Within 45 days of completion of each sampling period, the owner or operator shall determine whether the results are above or below the action level as follows:

(1) The owner or operator shall determine the facility impact on the benzene concentration (Δc) for each 14-day sampling period according to either paragraph (f)(1)(i) or (ii) of this section, as applicable.

(i) Except when near-field source correction is used as provided in paragraph (i) of this section, the owner or operator shall determine the highest and lowest sample results for benzene concentrations from the sample pool and calculate Δc as the difference in these concentrations. The owner or operator shall adhere to the following procedures when one or more samples for the sampling period are below the method detection limit for benzene:

(A) If the lowest detected value of benzene is below detection, the owner or operator shall use zero as the lowest sample result when calculating Δc .

(B) If all sample results are below the method detection limit, the owner or operator shall use the method detection limit as the highest sample result.

(ii) When near-field source correction is used as provided in paragraph (i) of this section, the owner or operator shall determine Δc using the calculation protocols outlined in the approved site-specific monitoring plan and in paragraph (i) of this section.

(2) The owner or operator shall calculate the annual average Δc based on the average of the 26 most recent 14-day sampling periods. The owner or operator shall update this annual

average value after receiving the results of each subsequent 14-day sampling period.

(3) The action level for benzene is 9 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) on an annual average basis. If the annual average Δc value for benzene is less than or equal to $9 \mu\text{g}/\text{m}^3$, the concentration is below the action level. If the annual average Δc value for benzene is greater than $9 \mu\text{g}/\text{m}^3$, the concentration is above the action level, and the owner or operator shall conduct a root cause analysis and corrective action in accordance with paragraph (g) of this section.

(g) Within 5 days of determining that the action level has been exceeded for any annual average Δc and no longer than 50 days after completion of the sampling period, the owner or operator shall initiate a root cause analysis to determine the cause of such exceedance and to determine appropriate corrective action, such as those described in paragraphs (g)(1) through (4) of this section. The root cause analysis and initial corrective action analysis shall be completed and initial corrective actions taken no later than 45 days after determining there is an exceedance. Root cause analysis and corrective action may include, but is not limited to:

(1) Leak inspection using Method 21 of part 60, appendix A-7 of this chapter and repairing any leaks found.

(2) Leak inspection using optical gas imaging and repairing any leaks found.

(3) Visual inspection to determine the cause of the high benzene emissions and implementing repairs to reduce the level of emissions.

(4) Employing progressively more frequent sampling, analysis and meteorology (*e.g.*, using shorter sampling periods for Methods 325A and 325B of appendix A of this part, or using active sampling techniques).

(h) If, upon completion of the corrective action analysis and corrective actions such as those described in paragraph (g) of this section, the Δc value for the next 14-day sampling period for which the sampling start time begins after the completion of the corrective actions is greater than $9 \mu\text{g}/\text{m}^3$ or if all corrective action measures identified require more than 45 days to implement, the owner or operator shall develop a corrective action plan that describes the corrective action(s) completed to date, additional measures that the owner or operator proposes to employ to reduce fenceline concentrations below the action level, and a schedule for completion of these measures. The owner or operator shall submit the corrective action plan to the

Administrator within 60 days after receiving the analytical results indicating that the Δc value for the 14-day sampling period following the completion of the initial corrective action is greater than $9 \mu\text{g}/\text{m}^3$ or, if no initial corrective actions were identified, no later than 60 days following the completion of the corrective action analysis required in paragraph (g) of this section.

(i) An owner or operator may request approval from the Administrator for a site-specific monitoring plan to account for offsite upwind sources or onsite sources excluded under § 63.640(g) according to the requirements in paragraphs (i)(1) through (4) of this section.

(1) The owner or operator shall prepare and submit a site-specific monitoring plan and receive approval of the site-specific monitoring plan prior to using the near-field source alternative calculation for determining Δc provided in paragraph (i)(2) of this section. The site-specific monitoring plan shall include, at a minimum, the elements specified in paragraphs (i)(1)(i) through (v) of this section. The procedures in Section 12 of Method 325A of appendix A of this part are not required, but may be used, if applicable, when determining near-field source contributions.

(i) Identification of the near-field source or sources. For onsite sources, documentation that the onsite source is excluded under § 63.640(g) and identification of the specific provision in § 63.640(g) that applies to the source.

(ii) Location of the additional monitoring stations that shall be used to determine the uniform background concentration and the near-field source concentration contribution.

(iii) Identification of the fenceline monitoring locations impacted by the near-field source. If more than one near-field source is present, identify the near-field source or sources that are expected to contribute to the concentration at that monitoring location.

(iv) A description of (including sample calculations illustrating) the planned data reduction and calculations to determine the near-field source concentration contribution for each monitoring location.

(v) If more frequent monitoring or a monitoring station other than a passive diffusive tube monitoring station is proposed, provide a detailed description of the measurement methods, measurement frequency, and recording frequency for determining the uniform background or near-field source concentration contribution.

(2) When an approved site-specific monitoring plan is used, the owner or operator shall determine Δc for comparison with the $9 \mu\text{g}/\text{m}^3$ action level using the requirements specified in paragraphs (i)(2)(i) through (iii) of this section.

(i) For each monitoring location, calculate Δc_i using the following equation.

$$\Delta c_i = MFC_i - NFS_i - UB$$

Where:

Δc_i = The fenceline concentration, corrected for background, at measurement location i, micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

MFC_i = The measured fenceline concentration at measurement location i, $\mu\text{g}/\text{m}^3$.

NFS_i = The near-field source contributing concentration at measurement location i determined using the additional measurements and calculation procedures included in the site-specific monitoring plan, $\mu\text{g}/\text{m}^3$. For monitoring locations that are not included in the site-specific monitoring plan as impacted by a near-field source, use $NFS_i = 0 \mu\text{g}/\text{m}^3$.

UB = The uniform background concentration determined using the additional measurements included in the site-specific monitoring plan, $\mu\text{g}/\text{m}^3$. If no additional measurements are specified in the site-specific monitoring plan for determining the uniform background concentration, use $UB = 0 \mu\text{g}/\text{m}^3$.

(ii) When one or more samples for the sampling period are below the method detection limit for benzene, adhere to the following procedures:

(A) If the benzene concentration at the monitoring location used for the uniform background concentration is below the method detection limit, the owner or operator shall use zero for UB for that monitoring period.

(B) If the benzene concentration at the monitoring location(s) used to determine the near-field source contributing concentration is below the method detection limit, the owner or operator shall use zero for the monitoring location concentration when calculating NFS_i for that monitoring period.

(C) If a fenceline monitoring location sample result is below the method detection limit, the owner or operator shall use the method detection limit as the sample result.

(iii) Determine Δc for the monitoring period as the maximum value of Δc_i from all of the fenceline monitoring locations for that monitoring period.

(3) The site-specific monitoring plan shall be submitted and approved as described in paragraphs (i)(3)(i) through (iv) of this section.

(i) The site-specific monitoring plan must be submitted to the Administrator for approval.

(ii) The site-specific monitoring plan shall also be submitted to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143-01), Attention: Refinery Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Electronic copies in lieu of hard copies may also be submitted to refineryrtr@epa.gov.

(iii) The Administrator shall approve or disapprove the plan in 90 days. The plan shall be considered approved if the Administrator either approves the plan in writing, or fails to disapprove the plan in writing. The 90-day period shall begin when the Administrator receives the plan.

(iv) If the Administrator finds any deficiencies in the site-specific monitoring plan and disapproves the plan in writing, the owner or operator may revise and resubmit the site-specific monitoring plan following the requirements in paragraphs (i)(3)(i) and (ii) of this section. The 90-day period starts over with the resubmission of the revised monitoring plan.

(4) The approval by the Administrator of a site-specific monitoring plan will be based on the completeness, accuracy and reasonableness of the request for a site-specific monitoring plan. Factors that the Administrator will consider in reviewing the request for a site-specific monitoring plan include, but are not limited to, those described in paragraphs (i)(4)(i) through (v) of this section.

(i) The identification of the near-field source or sources. For onsite sources, the documentation provided that the onsite source is excluded under § 63.640(g).

(ii) The monitoring location selected to determine the uniform background concentration or an indication that no uniform background concentration monitor will be used.

(iii) The location(s) selected for additional monitoring to determine the near-field source concentration contribution.

(iv) The identification of the fenceline monitoring locations impacted by the near-field source or sources.

(v) The appropriateness of the planned data reduction and calculations to determine the near-field source concentration contribution for each monitoring location.

(vi) If more frequent monitoring is proposed, the adequacy of the description of the measurement and

recording frequency proposed and the adequacy of the rationale for using the alternative monitoring frequency.

(j) The owner or operator shall comply with the applicable recordkeeping and reporting requirements in § 63.655(h) and (i).

(k) As outlined in § 63.7(f), the owner or operator may submit a request for an alternative test method. At a minimum, the request must follow the requirements outlined in paragraphs (k)(1) through (7) of this section.

(1) The alternative method may be used in lieu of all or a partial number of passive samplers required in Method 325A of appendix A of this part.

(2) The alternative method must be validated according to Method 301 in appendix A of this part or contain performance based procedures and indicators to ensure self-validation.

(3) The method detection limit must nominally be at least an order of magnitude below the action level, *i.e.*, 0.9 µg/m³ benzene. The alternate test method must describe the procedures used to provide field verification of the detection limit.

(4) The spatial coverage must be equal to or better than the spatial coverage provided in Method 325A of appendix A of this part.

(i) For path average concentration open-path instruments, the physical path length of the measurement shall be no more than a passive sample footprint (the spacing that would be provided by the sorbent traps when following Method 325A). For example, if Method 325A requires spacing monitors A and B 610 meters (2000 feet) apart, then the physical path length limit for the measurement at that portion of the fenceline shall be no more than 610 meters (2000 feet).

(ii) For range resolved open-path instrument or approach, the instrument or approach must be able to resolve an average concentration over each passive sampler footprint within the path length of the instrument.

(iii) The extra samplers required in Sections 8.2.1.3 of Method 325A may be omitted when they fall within the path length of an open-path instrument.

(5) At a minimum, non-integrating alternative test methods must provide a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(6) For alternative test methods capable of real time measurements (less than a 5 minute sampling and analysis cycle), the alternative test method may allow for elimination of data points corresponding to outside emission sources for purpose of calculation of the

high point for the two week average. The alternative test method approach must have wind speed, direction and stability class of the same time resolution and within the footprint of the instrument.

(7) For purposes of averaging data points to determine the Δc for the 14-day average high sample result, all results measured under the method detection limit must use the method detection limit. For purposes of averaging data points for the 14-day average low sample result, all results measured under the method detection limit must use zero.

■ 31. Section 63.660 is added to read as follows:

§ 63.660 Storage vessel provisions.

On and after the applicable compliance date for a Group 1 storage vessel located at a new or existing source as specified in § 63.640(h), the owner or operator of a Group 1 storage vessel that is part of a new or existing source shall comply with the requirements in subpart WW or SS of this part according to the requirements in paragraphs (a) through (i) of this section.

(a) As used in this section, all terms not defined in § 63.641 shall have the meaning given them in subpart A, WW, or SS of this part. The definitions of “Group 1 storage vessel” (paragraph (2)) and “Storage vessel” in § 63.641 shall apply in lieu of the definition of “Storage vessel” in § 63.1061.

(1) An owner or operator may use good engineering judgment or test results to determine the stored liquid weight percent total organic HAP for purposes of group determination. Data, assumptions, and procedures used in the determination shall be documented.

(2) When an owner or operator and the Administrator do not agree on whether the annual average weight percent organic HAP in the stored liquid is above or below 4 percent for a storage vessel at an existing source or above or below 2 percent for a storage vessel at a new source, an appropriate method (based on the type of liquid stored) as published by EPA or a consensus-based standards organization shall be used. Consensus-based standards organizations include, but are not limited to, the following: ASTM International (100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428-B2959, (800) 262-1373, <http://www.astm.org>), the American National Standards Institute (ANSI, 1819 L Street NW., 6th Floor, Washington, DC 20036, (202) 293-8020, <http://www.ansi.org>), the American Gas Association (AGA, 400 North Capitol

Street NW., 4th Floor, Washington, DC 20001, (202) 824-7000, <http://www.aga.org>), the American Society of Mechanical Engineers (ASME, Three Park Avenue, New York, NY 10016-5990, (800) 843-2763, <http://www.asme.org>), the American Petroleum Institute (API, 1220 L Street NW., Washington, DC 20005-4070, (202) 682-8000, <http://www.api.org>), and the North American Energy Standards Board (NAESB, 801 Travis Street, Suite 1675, Houston, TX 77002, (713) 356-0060, <http://www.naesb.org>).

(b) A floating roof storage vessel complying with the requirements of subpart WW of this part may comply with the control option specified in paragraph (b)(1) of this section and, if equipped with a ladder having at least one slotted leg, shall comply with one of the control options as described in paragraph (b)(2) of this section.

(1) In addition to the options presented in §§ 63.1063(a)(2)(viii)(A) and (B) and 63.1064, a floating roof storage vessel may comply with § 63.1063(a)(2)(vii) using a flexible enclosure device and either a gasketed or welded cap on the top of the guidepole.

(2) Each opening through a floating roof for a ladder having at least one slotted leg shall be equipped with one of the configurations specified in paragraphs (b)(2)(i) through (iii) of this section.

(i) A pole float in the slotted leg and pole wipers for both legs. The wiper or seal of the pole float must be at or above the height of the pole wiper.

(ii) A ladder sleeve and pole wipers for both legs of the ladder.

(iii) A flexible enclosure device and either a gasketed or welded cap on the top of the slotted leg.

(c) For the purposes of this subpart, references shall apply as specified in paragraphs (c)(1) through (6) of this section.

(1) All references to “the proposal date for a referencing subpart” and “the proposal date of the referencing subpart” in subpart WW of this part mean June 30, 2014.

(2) All references to “promulgation of the referencing subpart” and “the promulgation date of the referencing subpart” in subpart WW of this part mean February 1, 2016.

(3) All references to “promulgation date of standards for an affected source or affected facility under a referencing subpart” in subpart SS of this part mean February 1, 2016.

(4) All references to “the proposal date of the relevant standard established pursuant to CAA section 112(f)” in

subpart SS of this part mean June 30, 2014.

(5) All references to “the proposal date of a relevant standard established pursuant to CAA section 112(d)” in subpart SS of this part mean July 14, 1994.

(6) All references to the “required control efficiency” in subpart SS of this part mean reduction of organic HAP emissions by 95 percent or to an outlet concentration of 20 ppmv.

(d) For an uncontrolled fixed roof storage vessel that commenced construction on or before June 30, 2014, and that meets the definition of “Group 1 storage vessel”, paragraph (2), in § 63.641 but not the definition of “Group 1 storage vessel”, paragraph (1), in § 63.641, the requirements of § 63.982 and/or § 63.1062 do not apply until the next time the storage vessel is completely emptied and degassed, or January 30, 2026, whichever occurs first.

(e) Failure to perform inspections and monitoring required by this section shall constitute a violation of the applicable standard of this subpart.

(f) References in § 63.1066(a) to initial startup notification requirements do not apply.

(g) References to the Notification of Compliance Status in § 63.999(b) mean the Notification of Compliance Status required by § 63.655(f).

(h) References to the Periodic Reports in §§ 63.1066(b) and 63.999(c) mean the Periodic Report required by § 63.655(g).

(i) Owners or operators electing to comply with the requirements in subpart SS of this part for a Group 1 storage vessel must comply with the requirements in paragraphs (i)(1) through (3) of this section.

(1) If a flare is used as a control device, the flare shall meet the requirements of § 63.670 instead of the flare requirements in § 63.987.

(2) If a closed vent system contains a bypass line, the owner or operator shall comply with the provisions of either § 63.983(a)(3)(i) or (ii) for each closed vent system that contains bypass lines that could divert a vent stream either directly to the atmosphere or to a control device that does not comply with the requirements in subpart SS of this part. Except as provided in paragraphs (i)(2)(i) and (ii) of this section, use of the bypass at any time to divert a Group 1 storage vessel to either directly to the atmosphere or to a control device that does not comply with the requirements in subpart SS of this part is an emissions standards violation. Equipment such as low leg drains and equipment subject to

§ 63.648 are not subject to this paragraph (i)(2).

(i) If planned routine maintenance of the control device cannot be performed during periods that storage vessel emissions are vented to the control device or when the storage vessel is taken out of service for inspections or other planned maintenance reasons, the owner or operator may bypass the control device.

(ii) Periods for which storage vessel control device may be bypassed for planned routine maintenance of the control device shall not exceed 240 hours per calendar year.

(3) If storage vessel emissions are routed to a fuel gas system or process, the fuel gas system or process shall be operating at all times when regulated emissions are routed to it. The exception in § 63.984(a)(1) does not apply.

■ 32. Section 63.670 is added to read as follows:

§ 63.670 Requirements for flare control devices.

On or before January 30, 2019, the owner or operator of a flare used as a control device for an emission point subject to this subpart shall meet the applicable requirements for flares as specified in paragraphs (a) through (q) of this section and the applicable requirements in § 63.671. The owner or operator may elect to comply with the requirements of paragraph (r) of this section in lieu of the requirements in paragraphs (d) through (f) of this section, as applicable.

(a) [Reserved]

(b) *Pilot flame presence.* The owner or operator shall operate each flare with a pilot flame present at all times when regulated material is routed to the flare. Each 15-minute block during which there is at least one minute where no pilot flame is present when regulated material is routed to the flare is a deviation of the standard. Deviations in different 15-minute blocks from the same event are considered separate deviations. The owner or operator shall monitor for the presence of a pilot flame as specified in paragraph (g) of this section.

(c) *Visible emissions.* The owner or operator shall specify the smokeless design capacity of each flare and operate with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours, when regulated material is routed to the flare and the flare vent gas flow rate is less than the smokeless design capacity of the flare. The owner or operator shall monitor for visible

emissions from the flare as specified in paragraph (h) of this section.

(d) *Flare tip velocity.* For each flare, the owner or operator shall comply with either paragraph (d)(1) or (2) of this section, provided the appropriate monitoring systems are in-place, whenever regulated material is routed to the flare for at least 15-minutes and the flare vent gas flow rate is less than the smokeless design capacity of the flare.

(1) Except as provided in paragraph (d)(2) of this section, the actual flare tip velocity (V_{tip}) must be less than 60 feet per second. The owner or operator shall monitor V_{tip} using the procedures specified in paragraphs (i) and (k) of this section.

(2) V_{tip} must be less than 400 feet per second and also less than the maximum allowed flare tip velocity (V_{max}) as calculated according to the following equation. The owner or operator shall monitor V_{tip} using the procedures specified in paragraphs (i) and (k) of this section and monitor gas composition and determine NHV_{vg} using the procedures specified in paragraphs (j) and (l) of this section.

$$\text{Log}_{10}(V_{max}) = \frac{NHV_{vg} + 1,212}{850}$$

Where:

V_{max} = Maximum allowed flare tip velocity, ft/sec.

NHV_{vg} = Net heating value of flare vent gas, as determined by paragraph (l)(4) of this section, Btu/scf.

1,212 = Constant.

850 = Constant.

(e) *Combustion zone operating limits.* For each flare, the owner or operator shall operate the flare to maintain the net heating value of flare combustion zone gas (NHV_{cz}) at or above 270 British thermal units per standard cubic feet (Btu/scf) determined on a 15-minute block period basis when regulated material is routed to the flare for at least 15-minutes. The owner or operator shall monitor and calculate NHV_{cz} as specified in paragraph (m) of this section.

(f) *Dilution operating limits for flares with perimeter assist air.* For each flare actively receiving perimeter assist air, the owner or operator shall operate the flare to maintain the net heating value dilution parameter (NHV_{dil}) at or above 22 British thermal units per square foot (Btu/ft²) determined on a 15-minute block period basis when regulated material is being routed to the flare for at least 15-minutes. The owner or operator shall monitor and calculate NHV_{dil} as specified in paragraph (n) of this section.

(g) *Pilot flame monitoring.* The owner or operator shall continuously monitor the presence of the pilot flame(s) using a device (including, but not limited to, a thermocouple, ultraviolet beam sensor, or infrared sensor) capable of detecting that the pilot flame(s) is present.

(h) *Visible emissions monitoring.* The owner or operator shall monitor visible emissions while regulated materials are vented to the flare. An initial visible emissions demonstration must be conducted using an observation period of 2 hours using Method 22 at 40 CFR part 60, appendix A-7. Subsequent visible emissions observations must be conducted using either the methods in paragraph (h)(1) of this section or, alternatively, the methods in paragraph (h)(2) of this section. The owner or operator must record and report any instances where visible emissions are observed for more than 5 minutes during any 2 consecutive hours as specified in § 63.655(g)(11)(ii).

(1) At least once per day, conduct visible emissions observations using an observation period of 5 minutes using Method 22 at 40 CFR part 60, appendix A-7. If at any time the owner or operator sees visible emissions, even if the minimum required daily visible emission monitoring has already been performed, the owner or operator shall immediately begin an observation period of 5 minutes using Method 22 at 40 CFR part 60, appendix A-7. If visible emissions are observed for more than one continuous minute during any 5-minute observation period, the observation period using Method 22 at 40 CFR part 60, appendix A-7 must be extended to 2 hours or until 5-minutes of visible emissions are observed.

(2) Use a video surveillance camera to continuously record (at least one frame every 15 seconds with time and date stamps) images of the flare flame and a reasonable distance above the flare flame at an angle suitable for visual emissions observations. The owner or operator must provide real-time video surveillance camera output to the control room or other continuously manned location where the camera images may be viewed at any time.

(i) *Flare vent gas, steam assist and air assist flow rate monitoring.* The owner or operator shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the volumetric flow rate in the flare header or headers that feed the flare as well as any supplemental natural gas used. Different flow monitoring methods may be used to measure different gaseous streams that make up

the flare vent gas provided that the flow rates of all gas streams that contribute to the flare vent gas are determined. If assist air or assist steam is used, the owner or operator shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the volumetric flow rate of assist air and/or assist steam used with the flare. If pre-mix assist air and perimeter assist are both used, the owner or operator shall install, operate, calibrate, and maintain a monitoring system capable of separately measuring, calculating, and recording the volumetric flow rate of pre-mix assist air and perimeter assist air used with the flare. Continuously monitoring fan speed or power and using fan curves is an acceptable method for continuously monitoring assist air flow rates.

(1) The flow rate monitoring systems must be able to correct for the temperature and pressure of the system and output parameters in standard conditions (*i.e.*, a temperature of 20 °C (68 °F) and a pressure of 1 atmosphere).

(2) Mass flow monitors may be used for determining volumetric flow rate of flare vent gas provided the molecular weight of the flare vent gas is determined using compositional analysis as specified in paragraph (j) of this section so that the mass flow rate can be converted to volumetric flow at standard conditions using the following equation.

$$Q_{vol} = \frac{Q_{mass} \times 385.3}{MWt}$$

Where:

Q_{vol} = Volumetric flow rate, standard cubic feet per second.

Q_{mass} = Mass flow rate, pounds per second.
385.3 = Conversion factor, standard cubic feet per pound-mole.

MWt = Molecular weight of the gas at the flow monitoring location, pounds per pound-mole.

(3) Mass flow monitors may be used for determining volumetric flow rate of assist air or assist steam. Use equation in paragraph (i)(2) of this section to convert mass flow rates to volumetric flow rates. Use a molecular weight of 18 pounds per pound-mole for assist steam and use a molecular weight of 29 pounds per pound-mole for assist air.

(4) Continuous pressure/temperature monitoring system(s) and appropriate engineering calculations may be used in lieu of a continuous volumetric flow monitoring systems provided the molecular weight of the gas is known. For assist steam, use a molecular weight of 18 pounds per pound-mole. For assist air, use a molecular weight of 29 pounds

per pound-mole. For flare vent gas, molecular weight must be determined using compositional analysis as specified in paragraph (j) of this section.

(j) *Flare vent gas composition monitoring.* The owner or operator shall determine the concentration of individual components in the flare vent gas using either the methods provided in paragraph (j)(1) or (2) of this section, to assess compliance with the operating limits in paragraph (e) of this section and, if applicable, paragraphs (d) and (f) of this section. Alternatively, the owner or operator may elect to directly monitor the net heating value of the flare vent gas following the methods provided in paragraphs (j)(3) of this section and, if desired, may directly measure the hydrogen concentration in the flare vent gas following the methods provided in paragraphs (j)(4) of this section. The owner or operator may elect to use different monitoring methods for different gaseous streams that make up the flare vent gas using different methods provided the composition or net heating value of all gas streams that contribute to the flare vent gas are determined.

(1) Except as provided in paragraphs (j)(5) and (6) of this section, the owner or operator shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring (*i.e.*, at least once every 15-minutes), calculating, and recording the individual component concentrations present in the flare vent gas.

(2) Except as provided in paragraphs (j)(5) and (6) of this section, the owner or operator shall install, operate, and maintain a grab sampling system capable of collecting an evacuated canister sample for subsequent compositional analysis at least once every eight hours while there is flow of regulated material to the flare. Subsequent compositional analysis of the samples must be performed according to Method 18 of 40 CFR part 60, appendix A-6, ASTM D6420-99 (Reapproved 2010), ASTM D1945-03 (Reapproved 2010), ASTM D1945-14 or ASTM UOP539-12 (all incorporated by reference—see § 63.14).

(3) Except as provided in paragraphs (j)(5) and (6) of this section, the owner or operator shall install, operate, calibrate, and maintain a calorimeter capable of continuously measuring, calculating, and recording NHV_{vg} at standard conditions.

(4) If the owner or operator uses a continuous net heating value monitor according to paragraph (j)(3) of this section, the owner or operator may, at their discretion, install, operate, calibrate, and maintain a monitoring

system capable of continuously measuring, calculating, and recording the hydrogen concentration in the flare vent gas.

(5) Direct compositional or net heating value monitoring is not required for purchased ("pipeline quality") natural gas streams. The net heating value of purchased natural gas streams may be determined using annual or more frequent grab sampling at any one representative location. Alternatively, the net heating value of any purchased natural gas stream can be assumed to be 920 Btu/scf.

(6) Direct compositional or net heating value monitoring is not required for gas streams that have been demonstrated to have consistent composition (or a fixed minimum net heating value) according to the methods in paragraphs (j)(6)(i) through (v) of this section.

(i) The owner or operator shall submit to the Administrator a written application for an exemption from monitoring. The application must contain the following information:

(A) A description of the flare gas stream/system to be considered, including submission of a portion of the appropriate piping diagrams indicating the boundaries of the flare gas stream/system and the affected flare(s) to be considered;

(B) A statement that there are no crossover or entry points to be introduced into the flare gas stream/system (this should be shown in the piping diagrams) prior to the point where the flow rate of the gas streams is measured;

(C) An explanation of the conditions that ensure that the flare gas net heating value is consistent and, if flare gas net heating value is expected to vary (e.g., due to product loading of different material), the conditions expected to produce the flare gas with the lowest net heating value;

(D) The supporting test results from sampling the requested flare gas stream/system for the net heating value. Sampling data must include, at minimum, 2 weeks of daily measurement values (14 grab samples) for frequently operated flare gas streams/systems; for infrequently operated flare gas streams/systems, seven grab samples must be collected unless other additional information would support reduced sampling. If the flare gas stream composition can vary, samples must be taken during those conditions expected to result in lowest net heating value identified in paragraph (j)(6)(i)(C) of this section. The owner or operator shall determine net heating value for the gas stream using

either gas composition analysis or net heating value monitor (with optional hydrogen concentration analyzer) according to the method provided in paragraph (l) of this section; and

(E) A description of how the 2 weeks (or seven samples for infrequently operated flare gas streams/systems) of monitoring results compares to the typical range of net heating values expected for the flare gas stream/system going to the affected flare (e.g., "the samples are representative of typical operating conditions of the flare gas stream going to the loading rack flare" or "the samples are representative of conditions expected to yield the lowest net heating value of the flare gas stream going to the loading rack flare").

(F) The net heating value to be used for all flows of the flare vent gas from the flare gas stream/system covered in the application. A single net heating value must be assigned to the flare vent gas either by selecting the lowest net heating value measured in the sampling program or by determining the 95th percent confidence interval on the mean value of all samples collected using the t-distribution statistic (which is 1.943 for 7 grab samples or 1.771 for 14 grab samples).

(ii) The effective date of the exemption is the date of submission of the information required in paragraph (j)(6)(i) of this section.

(iii) No further action is required unless refinery operating conditions change in such a way that affects the exempt fuel gas stream/system (e.g., the stream composition changes). If such a change occurs, the owner or operator shall follow the procedures in paragraph (j)(6)(iii)(A), (B), or (C) of this section.

(A) If the operation change results in a flare vent gas net heating value that is still within the range of net heating values included in the original application, the owner or operator shall determine the net heating value on a grab sample and record the results as proof that the net heating value assigned to the vent gas stream in the original application is still appropriate.

(B) If the operation change results in a flare vent gas net heating value that is lower than the net heating value assigned to the vent gas stream in the original application, the owner or operator may submit new information following the procedures of paragraph (j)(6)(i) of this section within 60 days (or within 30 days after the seventh grab sample is tested for infrequently operated process units).

(C) If the operation change results in a flare vent gas net heating value has greater variability in the flare gas stream/system such the owner or

operator chooses not to submit new information to support an exemption, the owner or operator must begin monitoring the composition or net heat content of the flare vent gas stream using the methods in this section (i.e., grab samples every 8 hours until such time a continuous monitor, if elected, is installed).

(k) *Calculation methods for cumulative flow rates and determining compliance with Vtip operating limits.* The owner or operator shall determine V_{tip} on a 15-minute block average basis according to the following requirements.

(1) The owner or operator shall use design and engineering principles to determine the unobstructed cross sectional area of the flare tip. The unobstructed cross sectional area of the flare tip is the total tip area that vent gas can pass through. This area does not include any stability tabs, stability rings, and upper steam or air tubes because flare vent gas does not exit through them.

(2) The owner or operator shall determine the cumulative volumetric flow of flare vent gas for each 15-minute block average period using the data from the continuous flow monitoring system required in paragraph (i) of this section according to the following requirements, as applicable. If desired, the cumulative flow rate for a 15-minute block period only needs to include flow during those periods when regulated material is sent to the flare, but owners or operators may elect to calculate the cumulative flow rates across the entire 15-minute block period for any 15-minute block period where there is regulated material flow to the flare.

(i) Use set 15-minute time periods starting at 12 midnight to 12:15 a.m., 12:15 a.m. to 12:30 a.m. and so on concluding at 11:45 p.m. to midnight when calculating 15-minute block average flow volumes.

(ii) If continuous pressure/temperature monitoring system(s) and engineering calculations are used as allowed under paragraph (i)(4) of this section, the owner or operator shall, at a minimum, determine the 15-minute block average temperature and pressure from the monitoring system and use those values to perform the engineering calculations to determine the cumulative flow over the 15-minute block average period. Alternatively, the owner or operator may divide the 15-minute block average period into equal duration subperiods (e.g., three 5-minute periods) and determine the average temperature and pressure for each subperiod, perform engineering calculations to determine the flow for each subperiod, then add the volumetric

flows for the subperiods to determine the cumulative volumetric flow of vent gas for the 15-minute block average period.

(3) The 15-minute block average V_{tip} shall be calculated using the following equation.

$$V_{tip} = \frac{Q_{cum}}{Area \times 900}$$

Where:

V_{tip} = Flare tip velocity, feet per second.

Q_{cum} = Cumulative volumetric flow over 15-minute block average period, actual cubic feet.

Area = Unobstructed area of the flare tip, square feet.

900 = Conversion factor, seconds per 15-minute block average.

(4) If the owner or operator chooses to comply with paragraph (d)(2) of this section, the owner or operator shall also determine the net heating value of the flare vent gas following the requirements in paragraphs (j) and (l) of this section and calculate V_{max} using the equation in paragraph (d)(2) of this section in order to compare V_{tip} to V_{max} on a 15-minute block average basis.

(l) *Calculation methods for determining flare vent gas net heating value.* The owner or operator shall determine the net heating value of the flare vent gas (NHV_{vg}) based on the composition monitoring data on a 15-minute block average basis according to the following requirements.

(1) If compositional analysis data are collected as provided in paragraph (j)(1) or (2) of this section, the owner or operator shall determine NHV_{vg} of a specific sample by using the following equation.

$$NHV_{vg} = \sum_{i=1}^n x_i NHV_i$$

Where:

NHV_{vg} = Net heating value of flare vent gas, Btu/scf.

i = Individual component in flare vent gas.

n = Number of components in flare vent gas.

x_i = Concentration of component i in flare vent gas, volume fraction.

NHV_i = Net heating value of component i according to table 12 of this subpart, Btu/scf. If the component is not specified in table 12 of this subpart, the heats of combustion may be determined using any published values where the net enthalpy per mole of offgas is based on combustion at 25 °C and 1 atmosphere (or constant pressure) with offgas water in the gaseous state, but the standard temperature for determining the volume corresponding to one mole of vent gas is 20 °C.

(2) If direct net heating value monitoring data are collected as provided in paragraph (j)(3) of this

section but a hydrogen concentration monitor is not used, the owner or operator shall use the direct output of the monitoring system(s) (in Btu/scf) to determine the NHV_{vg} for the sample.

(3) If direct net heating value monitoring data are collected as provided in paragraph (j)(3) of this section and hydrogen concentration monitoring data are collected as provided in paragraph (j)(4) of this section, the owner or operator shall use the following equation to determine NHV_{vg} for each sample measured via the net heating value monitoring system.

$$NHV_{vg} = NHV_{measured} + 938x_{H2}$$

Where:

NHV_{vg} = Net heating value of flare vent gas, Btu/scf.

$NHV_{measured}$ = Net heating value of flare vent gas stream as measured by the continuous net heating value monitoring system, Btu/scf.

x_{H2} = Concentration of hydrogen in flare vent gas at the time the sample was input into the net heating value monitoring system, volume fraction.

938 = Net correction for the measured heating value of hydrogen (1,212 – 274), Btu/scf.

(4) Use set 15-minute time periods starting at 12 midnight to 12:15 a.m., 12:15 a.m. to 12:30 a.m. and so on concluding at 11:45 p.m. to midnight when calculating 15-minute block averages.

(5) When a continuous monitoring system is used as provided in paragraph (j)(1) or (3) of this section and, if applicable, paragraph (j)(4) of this section, the owner or operator may elect to determine the 15-minute block average NHV_{vg} using either the calculation methods in paragraph (l)(5)(i) of this section or the calculation methods in paragraph (l)(5)(ii) of this section. The owner or operator may choose to comply using the calculation methods in paragraph (l)(5)(i) of this section for some flares at the petroleum refinery and comply using the calculation methods (l)(5)(ii) of this section for other flares. However, for each flare, the owner or operator must elect one calculation method that will apply at all times, and use that method for all continuously monitored flare vent streams associated with that flare. If the owner or operator intends to change the calculation method that applies to a flare, the owner or operator must notify the Administrator 30 days in advance of such a change.

(i) *Feed-forward calculation method.* When calculating NHV_{vg} for a specific 15-minute block:

(A) Use the results from the first sample collected during an event, (for

periodic flare vent gas flow events) for the first 15-minute block associated with that event.

(B) If the results from the first sample collected during an event (for periodic flare vent gas flow events) are not available until after the second 15-minute block starts, use the results from the first sample collected during an event for the second 15-minute block associated with that event.

(C) For all other cases, use the results that are available from the most recent sample prior to the 15-minute block period for that 15-minute block period for all flare vent gas streams. For the purpose of this requirement, use the time that the results become available rather than the time the sample was collected. For example, if a sample is collected at 12:25 a.m. and the analysis is completed at 12:38 a.m., the results are available at 12:38 a.m. and these results would be used to determine compliance during the 15-minute block period from 12:45 a.m. to 1:00 a.m.

(ii) *Direct calculation method.* When calculating NHV_{vg} for a specific 15-minute block:

(A) If the results from the first sample collected during an event (for periodic flare vent gas flow events) are not available until after the second 15-minute block starts, use the results from the first sample collected during an event for the first 15-minute block associated with that event.

(B) For all other cases, use the arithmetic average of all NHV_{vg} measurement data results that become available during a 15-minute block to calculate the 15-minute block average for that period. For the purpose of this requirement, use the time that the results become available rather than the time the sample was collected. For example, if a sample is collected at 12:25 a.m. and the analysis is completed at 12:38 a.m., the results are available at 12:38 a.m. and these results would be used to determine compliance during the 15-minute block period from 12:30 a.m. to 12:45 a.m.

(6) When grab samples are used to determine flare vent gas composition:

(i) Use the analytical results from the first grab sample collected for an event for all 15-minute periods from the start of the event through the 15-minute block prior to the 15-minute block in which a subsequent grab sample is collected.

(ii) Use the results from subsequent grab sampling events for all 15 minute periods starting with the 15-minute block in which the sample was collected and ending with the 15-minute block prior to the 15-minute block in which the next grab sample is collected. For

the purpose of this requirement, use the time the sample was collected rather than the time the analytical results become available.

(7) If the owner or operator monitors separate gas streams that combine to comprise the total flare vent gas flow, the 15-minute block average net heating value shall be determined separately for each measurement location according to the methods in paragraphs (l)(1) through

(6) of this section and a flow-weighted average of the gas stream net heating values shall be used to determine the 15-minute block average net heating value of the cumulative flare vent gas.

(m) *Calculation methods for determining combustion zone net heating value.* The owner or operator shall determine the net heating value of the combustion zone gas (NHV_{cz}) as

$$NHV_{cz} = \frac{Q_{vg} \times NHV_{vg}}{(Q_{vg} + Q_s + Q_{a,premix})}$$

Where:

NHV_{cz} = Net heating value of combustion zone gas, Btu/scf.

NHV_{vg} = Net heating value of flare vent gas for the 15-minute block period, Btu/scf.

Q_{vg} = Cumulative volumetric flow of flare vent gas during the 15-minute block period, scf.

Q_s = Cumulative volumetric flow of total steam during the 15-minute block period, scf.

Q_{a,premix} = Cumulative volumetric flow of premix assist air during the 15-minute block period, scf.

(2) Owners or operators of flares that use the feed-forward calculation methodology in paragraph (l)(5)(i) of

specified in paragraph (m)(1) or (2) of this section, as applicable.

(1) Except as specified in paragraph (m)(2) of this section, determine the 15-minute block average NHV_{cz} based on the 15-minute block average vent gas and assist gas flow rates using the following equation. For periods when there is no assist steam flow or premix assist air flow, NHV_{cz} = NHV_{vg}.

$$NHV_{cz} = \frac{(Q_{vg} - Q_{NG2} + Q_{NG1}) \times NHV_{vg} + (Q_{NG2} - Q_{NG1}) \times NHV_{NG}}{(Q_{vg} + Q_s + Q_{a,premix})}$$

Where:

NHV_{cz} = Net heating value of combustion zone gas, Btu/scf.

NHV_{vg} = Net heating value of flare vent gas for the 15-minute block period, Btu/scf.

Q_{vg} = Cumulative volumetric flow of flare vent gas during the 15-minute block period, scf.

Q_{NG2} = Cumulative volumetric flow of supplemental natural gas to the flare during the 15-minute block period, scf.

Q_{NG1} = Cumulative volumetric flow of supplemental natural gas to the flare during the previous 15-minute block period, scf. For the first 15-minute block period of an event, use the volumetric

flow value for the current 15-minute block period, i.e., Q_{NG1}=Q_{NG2}.

NHV_{NG} = Net heating value of supplemental natural gas to the flare for the 15-minute block period determined according to the requirements in paragraph (j)(5) of this section, Btu/scf.

Q_s = Cumulative volumetric flow of total steam during the 15-minute block period, scf.

Q_{a,premix} = Cumulative volumetric flow of premix assist air during the 15-minute block period, scf.

(n) *Calculation methods for determining the net heating value dilution parameter.* The owner or operator shall determine the net heating

value dilution parameter (NHV_{dil}) as specified in paragraph (n)(1) or (2) of this section, as applicable.

(1) Except as specified in paragraph (n)(2) of this section, determine the 15-minute block average NHV_{dil} based on the 15-minute block average vent gas and perimeter assist air flow rates using the following equation only during periods when perimeter assist air is used. For 15-minute block periods when there is no cumulative volumetric flow of perimeter assist air, the 15-minute block average NHV_{dil} parameter does not need to be calculated.

$$NHV_{dil} = \frac{Q_{vg} \times Diam \times NHV_{vg}}{(Q_{vg} + Q_s + Q_{a,premix} + Q_{a,perimeter})}$$

Where:

NHV_{dil} = Net heating value dilution parameter, Btu/ft².

NHV_{vg} = Net heating value of flare vent gas determined for the 15-minute block period, Btu/scf.

Q_{vg} = Cumulative volumetric flow of flare vent gas during the 15-minute block period, scf.

Diam = Effective diameter of the unobstructed area of the flare tip for flare vent gas flow, ft. Use the area as determined in paragraph (k)(1) of this section and determine the diameter as

$$Diam = 2 \times \sqrt{Area/\pi}$$

Q_s = Cumulative volumetric flow of total steam during the 15-minute block period, scf.

Q_{a,premix} = Cumulative volumetric flow of premix assist air during the 15-minute block period, scf.

Q_{a,perimeter} = Cumulative volumetric flow of perimeter assist air during the 15-minute block period, scf.

(2) Owners or operators of flares that use the feed-forward calculation

methodology in paragraph (l)(5)(i) of this section and that monitor gas composition or net heating value in a location representative of the cumulative vent gas stream and that directly monitor supplemental natural gas flow additions to the flare must determine the 15-minute block average NHV_{dil} using the following equation only during periods when perimeter assist air is used. For 15-minute block periods when there is no cumulative

volumetric flow of perimeter assist air, the 15-minute block average NHV_{dil}

parameter does not need to be calculated.

$$NHV_{dil} = \frac{[(Q_{vg} - Q_{NG2} + Q_{NG1}) \times NHV_{vg} + (Q_{NG2} - Q_{NG1}) \times NHV_{NG}] \times Diam}{(Q_{vg} + Q_s + Q_{a,premix} + Q_{a,perimeter})}$$

Where:

NHV_{dil} = Net heating value dilution parameter, Btu/ft².

NHV_{vg} = Net heating value of flare vent gas determined for the 15-minute block period, Btu/scf.

Q_{vg} = Cumulative volumetric flow of flare vent gas during the 15-minute block period, scf.

Q_{NG2} = Cumulative volumetric flow of supplemental natural gas to the flare during the 15-minute block period, scf.

Q_{NG1} = Cumulative volumetric flow of supplemental natural gas to the flare during the previous 15-minute block period, scf. For the first 15-minute block period of an event, use the volumetric flow value for the current 15-minute block period, i.e., $Q_{NG1} = Q_{NG2}$.

NHV_{NG} = Net heating value of supplemental natural gas to the flare for the 15-minute block period determined according to the requirements in paragraph (j)(5) of this section, Btu/scf.

Diam = Effective diameter of the unobstructed area of the flare tip for flare vent gas flow, ft. Use the area as determined in paragraph (k)(1) of this section and determine the diameter as

$$Diam = 2 \times \sqrt{Area/\pi}.$$

Q_s = Cumulative volumetric flow of total steam during the 15-minute block period, scf.

$Q_{a,premix}$ = Cumulative volumetric flow of premix assist air during the 15-minute block period, scf.

$Q_{a,perimeter}$ = Cumulative volumetric flow of perimeter assist air during the 15-minute block period, scf.

(o) *Emergency flaring provisions.* The owner or operator of a flare that has the potential to operate above its smokeless capacity under any circumstance shall comply with the provisions in paragraphs (o)(1) through (8) of this section.

(1) Develop a flare management plan to minimize flaring during periods of startup, shutdown, or emergency releases. The flare management plan must include the information described in paragraphs (o)(1)(i) through (vii) of this section.

(i) A listing of all refinery process units, ancillary equipment, and fuel gas systems connected to the flare for each affected flare.

(ii) An assessment of whether discharges to affected flares from these process units, ancillary equipment and fuel gas systems can be minimized or

prevented during periods of startup, shutdown, or emergency releases. The flare minimization assessment must (at a minimum) consider the items in paragraphs (o)(1)(ii)(A) through (C) of this section. The assessment must provide clear rationale in terms of costs (capital and annual operating), natural gas offset credits (if applicable), technical feasibility, secondary environmental impacts and safety considerations for the selected minimization alternative(s) or a statement, with justifications, that flow reduction could not be achieved. Based upon the assessment, each owner or operator of an affected flare shall identify the minimization alternatives that it has implemented by the due date of the flare management plan and shall include a schedule for the prompt implementation of any selected measures that cannot reasonably be completed as of that date.

(A) Modification in startup and shutdown procedures to reduce the quantity of process gas discharge to the flare.

(B) Implementation of prevention measures listed for pressure relief devices in § 63.648(j)(5) for each pressure relief valve that can discharge to the flare.

(C) Installation of a flare gas recovery system or, for facilities that are fuel gas rich, a flare gas recovery system and a co-generation unit or combined heat and power unit.

(iii) A description of each affected flare containing the information in paragraphs (o)(1)(iii)(A) through (G) of this section.

(A) A general description of the flare, including whether it is a ground flare or elevated (including height), the type of assist system (e.g., air, steam, pressure, non-assisted), whether the flare is used on a routine basis or if it is only used during periods of startup, shutdown or emergency release, and whether the flare is equipped with a flare gas recovery system.

(B) The smokeless capacity of the flare based on design conditions. Note: A single value must be provided for the smokeless capacity of the flare.

(C) The maximum vent gas flow rate (hydraulic load capacity).

(D) The maximum supplemental gas flow rate.

(E) For flares that receive assist steam, the minimum total steam rate and the maximum total steam rate.

(F) For flares that receive assist air, an indication of whether the fan/blower is single speed, multi-fixed speed (e.g., high, medium, and low speeds), or variable speeds. For fans/blowers with fixed speeds, provide the estimated assist air flow rate at each fixed speed. For variable speeds, provide the design fan curve (e.g., air flow rate as a function of power input).

(G) Simple process flow diagram showing the locations of the flare following components of the flare: Flare tip (date installed, manufacturer, nominal and effective tip diameter, tip drawing); knockout or surge drum(s) or pot(s) (including dimensions and design capacities); flare header(s) and subheader(s); assist system; and ignition system.

(iv) Description and simple process flow diagram showing all gas lines (including flare waste gas, purge or sweep gas (as applicable), supplemental gas) that are associated with the flare. For purge, sweep, supplemental gas, identify the type of gas used. Designate which lines are exempt from composition or net heating value monitoring and why (e.g., natural gas, gas streams that have been demonstrated to have consistent composition, pilot gas). Designate which lines are monitored and identify on the process flow diagram the location and type of each monitor. Designate the pressure relief devices that are vented to the flare.

(v) For each flow rate, gas composition, net heating value or hydrogen concentration monitor identified in paragraph (o)(1)(iv) of this section, provide a detailed description of the manufacturer's specifications, including, but not limited to, make, model, type, range, precision, accuracy, calibration, maintenance and quality assurance procedures.

(vi) For each pressure relief valve vented to the flare identified in paragraph (o)(1)(iv) of this section, provide a detailed description of each pressure release valve, including type of relief device (rupture disc, valve type) diameter of the relief valve, set pressure of the relief valve and listing of the prevention measures implemented. This

information may be maintained in an electronic database on-site and does not need to be submitted as part of the flare management plan unless requested to do so by the Administrator.

(vii) Procedures to minimize or eliminate discharges to the flare during the planned startup and shutdown of the refinery process units and ancillary equipment that are connected to the affected flare, together with a schedule for the prompt implementation of any procedures that cannot reasonably be implemented as of the date of the submission of the flare management plan.

(2) Each owner or operator required to develop and implement a written flare management plan as described in paragraph (o)(1) of this section must submit the plan to the Administrator as described in paragraphs (o)(2)(i) through (iii) of this section.

(i) The owner or operator must develop and implement the flare management plan no later than January 30, 2019 or at startup for a new flare that commenced construction on or after February 1, 2016.

(ii) The owner or operator must comply with the plan as submitted by the date specified in paragraph (o)(2)(i) of this section. The plan should be updated periodically to account for changes in the operation of the flare, such as new connections to the flare or the installation of a flare gas recovery system, but the plan need be re-submitted to the Administrator only if the owner or operator alters the design smokeless capacity of the flare. The owner or operator must comply with the updated plan as submitted.

(iii) All versions of the plan submitted to the Administrator shall also be submitted to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143-01), Attention: Refinery Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Electronic copies in lieu of hard copies may also be submitted to refineryRTR@epa.gov.

(3) The owner or operator of a flare subject to this subpart shall conduct a root cause analysis and a corrective action analysis for each flow event that contains regulated material and that meets either the criteria in paragraph (o)(3)(i) or (ii) of this section.

(i) The vent gas flow rate exceeds the smokeless capacity of the flare and visible emissions are present from the flare for more than 5 minutes during any 2 consecutive hours during the release event.

(ii) The vent gas flow rate exceeds the smokeless capacity of the flare and the 15-minute block average flare tip velocity exceeds the maximum flare tip velocity determined using the methods in paragraph (d)(2) of this section.

(4) A root cause analysis and corrective action analysis must be completed as soon as possible, but no later than 45 days after a flare flow event meeting the criteria in paragraph (o)(3)(i) or (ii) of this section. Special circumstances affecting the number of root cause analyses and/or corrective action analyses are provided in paragraphs (o)(4)(i) through (v) of this section.

(i) You may conduct a single root cause analysis and corrective action analysis for a single continuous flare flow event that meets both of the criteria in paragraphs (o)(3)(i) and (ii) of this section.

(ii) You may conduct a single root cause analysis and corrective action analysis for a single continuous flare flow event regardless of the number of 15-minute block periods in which the flare tip velocity was exceeded or the number of 2 hour periods that contain more the 5 minutes of visible emissions.

(iii) You may conduct a single root cause analysis and corrective action analysis for a single event that causes two or more flares that are operated in series (*i.e.*, cascaded flare systems) to have a flow event meeting the criteria in paragraph (o)(3)(i) or (ii) of this section.

(iv) You may conduct a single root cause analysis and corrective action analysis for a single event that causes two or more flares to have a flow event meeting the criteria in paragraph (o)(3)(i) or (ii) of this section, regardless of the configuration of the flares, if the root cause is reasonably expected to be a force majeure event, as defined in this subpart.

(v) Except as provided in paragraphs (o)(4)(iii) and (iv) of this section, if more than one flare has a flow event that meets the criteria in paragraph (o)(3)(i) or (ii) of this section during the same time period, an initial root cause analysis shall be conducted separately for each flare that has a flow event meeting the criteria in paragraph (o)(3)(i) or (ii) of this section. If the initial root cause analysis indicates that the flow events have the same root cause(s), the initially separate root cause analyses may be recorded as a single root cause analysis and a single corrective action analysis may be conducted.

(5) Each owner or operator of a flare required to conduct a root cause analysis and corrective action analysis as specified in paragraphs (o)(3) and (4)

of this section shall implement the corrective action(s) identified in the corrective action analysis in accordance with the applicable requirements in paragraphs (o)(5)(i) through (iii) of this section.

(i) All corrective action(s) must be implemented within 45 days of the event for which the root cause and corrective action analyses were required or as soon thereafter as practicable. If an owner or operator concludes that no corrective action should be implemented, the owner or operator shall record and explain the basis for that conclusion no later than 45 days following the event.

(ii) For corrective actions that cannot be fully implemented within 45 days following the event for which the root cause and corrective action analyses were required, the owner or operator shall develop an implementation schedule to complete the corrective action(s) as soon as practicable.

(iii) No later than 45 days following the event for which a root cause and corrective action analyses were required, the owner or operator shall record the corrective action(s) completed to date, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(6) The owner or operator shall determine the total number of events for which a root cause and corrective action analyses was required during the calendar year for each affected flare separately for events meeting the criteria in paragraph (o)(3)(i) of this section and those meeting the criteria in paragraph (o)(3)(ii) of this section. For the purpose of this requirement, a single root cause analysis conducted for an event that met both of the criteria in paragraphs (o)(3)(i) and (ii) of this section would be counted as an event under each of the separate criteria counts for that flare. Additionally, if a single root cause analysis was conducted for an event that caused multiple flares to meet the criteria in paragraph (o)(3)(i) or (ii) of this section, that event would count as an event for each of the flares for each criteria in paragraph (o)(3) of this section that was met during that event. The owner or operator shall also determine the total number of events for which a root cause and correct action analyses was required and the analyses concluded that the root cause was a force majeure event, as defined in this subpart.

(7) The following events would be a violation of this emergency flaring work practice standard.

(i) Any flow event for which a root cause analysis was required and the root

cause was determined to be operator error or poor maintenance.

(ii) Two visible emissions exceedance events meeting the criteria in paragraph (o)(3)(i) of this section that were not caused by a force majeure event from a single flare in a 3 calendar year period for the same root cause for the same equipment.

(iii) Two flare tip velocity exceedance events meeting the criteria in paragraph (o)(3)(ii) of this section that were not caused by a force majeure event from a single flare in a 3 calendar year period for the same root cause for the same equipment.

(iv) Three visible emissions exceedance events meeting the criteria in paragraph (o)(3)(i) of this section that were not caused by a force majeure event from a single flare in a 3 calendar year period for any reason.

(v) Three flare tip velocity exceedance events meeting the criteria in paragraph (o)(3)(ii) of this section that were not caused by a force majeure event from a single flare in a 3 calendar year period for any reason.

(p) *Flare monitoring records.* The owner or operator shall keep the records specified in § 63.655(i)(9).

(q) *Reporting.* The owner or operator shall comply with the reporting requirements specified in § 63.655(g)(11).

(r) *Alternative means of emissions limitation.* An owner or operator may request approval from the Administrator for site-specific operating limits that shall apply specifically to a selected flare. Site-specific operating limits include alternative threshold values for the parameters specified in paragraphs (d) through (f) of this section as well as threshold values for operating parameters other than those specified in paragraphs (d) through (f) of this section. The owner or operator must demonstrate that the flare achieves 96.5 percent combustion efficiency (or 98 percent destruction efficiency) using the site-specific operating limits based on a performance evaluation as described in paragraph (r)(1) of this section. The request shall include information as described in paragraph (r)(2) of this section. The request shall be submitted and followed as described in paragraph (r)(3) of this section.

(1) The owner or operator shall prepare and submit a site-specific test plan and receive approval of the site-specific performance evaluation plan prior to conducting any flare performance evaluation test runs intended for use in developing site-specific operating limits. The site-specific performance evaluation plan shall include, at a minimum, the

elements specified in paragraphs (r)(1)(i) through (ix) of this section. Upon approval of the site-specific performance evaluation plan, the owner or operator shall conduct performance evaluation test runs for the flare following the procedures described in the site-specific performance evaluation plan.

(i) The design and dimensions of the flare, flare type (air-assisted only, steam-assisted only, air- and steam-assisted, pressure-assisted, or non-assisted), and description of gas being flared, including quantity of gas flared, frequency of flaring events (if periodic), expected net heating value of flare vent gas, minimum total steam assist rate.

(ii) The operating conditions (vent gas compositions, vent gas flow rates and assist flow rates, if applicable) likely to be encountered by the flare during normal operations and the operating conditions for the test period.

(iii) A description of (including sample calculations illustrating) the planned data reduction and calculations to determine the flare combustion or destruction efficiency.

(iv) Site-specific operating parameters to be monitored continuously during the flare performance evaluation. These parameters may include but are not limited to vent gas flow rate, steam and/or air assist flow rates, and flare vent gas composition. If new operating parameters are proposed for use other than those specified in paragraphs (d) through (f) of this section, an explanation of the relevance of the proposed operating parameter(s) as an indicator of flare combustion performance and why the alternative operating parameter(s) can adequately ensure that the flare achieves the required combustion efficiency.

(v) A detailed description of the measurement methods, monitored pollutant(s), measurement locations, measurement frequency, and recording frequency proposed for both emission measurements and flare operating parameters.

(vi) A description of (including sample calculations illustrating) the planned data reduction and calculations to determine the flare operating parameters.

(vii) The minimum number and length of test runs and range of operating values to be evaluated during the performance evaluation. A sufficient number of test runs shall be conducted to identify the point at which the combustion/destruction efficiency of the flare deteriorates.

(viii) [Reserved]

(ix) Test schedule.

(2) The request for flare-specific operating limits shall include sufficient and appropriate data, as determined by the Administrator, to allow the Administrator to confirm that the selected site-specific operating limit(s) adequately ensures that the flare destruction efficiency is 98 percent or greater or that the flare combustion efficiency is 96.5 percent or greater at all times. At a minimum, the request shall contain the information described in paragraphs (r)(2)(i) through (iv) of this section.

(i) The design and dimensions of the flare, flare type (air-assisted only, steam-assisted only, air- and steam-assisted, pressure-assisted, or non-assisted), and description of gas being flared, including quantity of gas flared, frequency of flaring events (if periodic), expected net heating value of flare vent gas, minimum total steam assist rate.

(ii) Results of each performance evaluation test run conducted, including, at a minimum:

(A) The measured combustion/destruction efficiency.

(B) The measured or calculated operating parameters for each test run. If operating parameters are calculated, the raw data from which the parameters are calculated must be included in the test report.

(C) Measurement location descriptions for both emission measurements and flare operating parameters.

(D) Description of sampling and analysis procedures (including number and length of test runs) and any modifications to standard procedures. If there were deviations from the approved test plan, a detailed description of the deviations and rationale why the test results or calculation procedures used are appropriate.

(E) Operating conditions (e.g., vent gas composition, assist rates, etc.) that occurred during the test.

(F) Quality assurance procedures.

(G) Records of calibrations.

(H) Raw data sheets for field sampling.

(I) Raw data sheets for field and laboratory analyses.

(J) Documentation of calculations.

(iii) The selected flare-specific operating limit values based on the performance evaluation test results, including the averaging time for the operating limit(s), and rationale why the selected values and averaging times are sufficiently stringent to ensure proper flare performance. If new operating parameters or averaging times are proposed for use other than those specified in paragraphs (d) through (f) of this section, an explanation of why the

alternative operating parameter(s) or averaging time(s) adequately ensures the flare achieves the required combustion efficiency.

(iv) The means by which the owner or operator will document on-going, continuous compliance with the selected flare-specific operating limit(s), including the specific measurement location and frequencies, calculation procedures, and records to be maintained.

(3) The request shall be submitted as described in paragraphs (r)(3)(i) through (iv) of this section.

(i) The owner or operator may request approval from the Administrator at any time upon completion of a performance evaluation conducted following the methods in an approved site-specific performance evaluation plan for an operating limit(s) that shall apply specifically to that flare.

(ii) The request must be submitted to the Administrator for approval. The owner or operator must continue to comply with the applicable standards for flares in this subpart until the requirements in § 63.6(g)(1) are met and a notice is published in the **Federal Register** allowing use of such an alternative means of emission limitation.

(iii) The request shall also be submitted to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143-01), Attention: Refinery Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Electronic copies in lieu of hard copies may also be submitted to refineryrtr@epa.gov.

(iv) If the Administrator finds any deficiencies in the request, the request must be revised to address the deficiencies and be re-submitted for approval within 45 days of receipt of the notice of deficiencies. The owner or operator must comply with the revised request as submitted until it is approved.

(4) The approval process for a request for a flare-specific operating limit(s) is described in paragraphs (r)(4)(i) through (iii) of this section.

(i) Approval by the Administrator of a flare-specific operating limit(s) request will be based on the completeness, accuracy and reasonableness of the request. Factors that the EPA will consider in reviewing the request for approval include, but are not limited to, those described in paragraphs (r)(4)(i)(A) through (C) of this section.

(A) The description of the flare design and operating characteristics.

(B) If a new operating parameter(s) other than those specified in paragraphs (d) through (f) of this section is proposed, the explanation of how the proposed operating parameter(s) serves a good indicator(s) of flare combustion performance.

(C) The results of the flare performance evaluation test runs and the establishment of operating limits that ensures that the flare destruction efficiency is 98 percent or greater or that the flare combustion efficiency is 96.5 percent or greater at all times.

(D) The completeness of the flare performance evaluation test report.

(ii) If the request is approved by the Administrator, a flare-specific operating limit(s) will be established at the level(s) demonstrated in the approved request.

(iii) If the Administrator finds any deficiencies in the request, the request must be revised to address the deficiencies and be re-submitted for approval.

■ 33. Section 63.671 is added to read as follows:

§ 63.671 Requirements for flare monitoring systems.

(a) *Operation of CPMS.* For each CPMS installed to comply with applicable provisions in § 63.670, the owner or operator shall install, operate, calibrate, and maintain the CPMS as specified in paragraphs (a)(1) through (8) of this section.

(1) Except for CPMS installed for pilot flame monitoring, all monitoring equipment must meet the applicable minimum accuracy, calibration and quality control requirements specified in table 13 of this subpart.

(2) The owner or operator shall ensure the readout (that portion of the CPMS that provides a visual display or record) or other indication of the monitored operating parameter from any CPMS required for compliance is readily accessible onsite for operational control or inspection by the operator of the source.

(3) All CPMS must complete a minimum of one cycle of operation (sampling, analyzing and data recording) for each successive 15-minute period.

(4) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall operate all CPMS and collect data continuously at all times when regulated emissions are routed to the flare.

(5) The owner or operator shall operate, maintain, and calibrate each CPMS according to the CPMS monitoring plan specified in paragraph (b) of this section.

(6) For each CPMS except for CPMS installed for pilot flame monitoring, the owner or operator shall comply with the out-of-control procedures described in paragraph (c) of this section.

(7) The owner or operator shall reduce data from a CPMS as specified in paragraph (d) of this section.

(8) The CPMS must be capable of measuring the appropriate parameter over the range of values expected for that measurement location. The data recording system associated with each CPMS must have a resolution that is equal to or better than the required system accuracy.

(b) *CPMS monitoring plan.* The owner or operator shall develop and implement a CPMS quality control program documented in a CPMS monitoring plan that covers each flare subject to the provisions in § 63.670 and each CPMS installed to comply with applicable provisions in § 63.670. The owner or operator shall have the CPMS monitoring plan readily available on-site at all times and shall submit a copy of the CPMS monitoring plan to the Administrator upon request by the Administrator. The CPMS monitoring plan must contain the information listed in paragraphs (b)(1) through (5) of this section.

(1) Identification of the specific flare being monitored and the flare type (air-assisted only, steam-assisted only, air-and steam-assisted, pressure-assisted, or non-assisted).

(2) Identification of the parameter to be monitored by the CPMS and the expected parameter range, including worst case and normal operation.

(3) Description of the monitoring equipment, including the information specified in paragraphs (b)(3)(i) through (vii) of this section.

(i) Manufacturer and model number for all monitoring equipment components installed to comply with applicable provisions in § 63.670.

(ii) Performance specifications, as provided by the manufacturer, and any differences expected for this installation and operation.

(iii) The location of the CPMS sampling probe or other interface and a justification of how the location meets the requirements of paragraph (a)(1) of this section.

(iv) Placement of the CPMS readout, or other indication of parameter values, indicating how the location meets the requirements of paragraph (a)(2) of this section.

(v) Span of the CPMS. The span of the CPMS sensor and analyzer must encompass the full range of all expected values.

(vi) How data outside of the span of the CPMS will be handled and the corrective action that will be taken to reduce and eliminate such occurrences in the future.

(vii) Identification of the parameter detected by the parametric signal analyzer and the algorithm used to convert these values into the operating parameter monitored to demonstrate compliance, if the parameter detected is different from the operating parameter monitored.

(4) Description of the data collection and reduction systems, including the information specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) A copy of the data acquisition system algorithm used to reduce the measured data into the reportable form of the standard and to calculate the applicable averages.

(ii) Identification of whether the algorithm excludes data collected during CPMS breakdowns, out-of-control periods, repairs, maintenance periods, instrument adjustments or checks to maintain precision and accuracy, calibration checks, and zero (low-level), mid-level (if applicable) and high-level adjustments.

(iii) If the data acquisition algorithm does not exclude data collected during CPMS breakdowns, out-of-control periods, repairs, maintenance periods, instrument adjustments or checks to maintain precision and accuracy, calibration checks, and zero (low-level), mid-level (if applicable) and high-level adjustments, a description of the procedure for excluding this data when the averages calculated as specified in paragraph (e) of this section are determined.

(5) Routine quality control and assurance procedures, including descriptions of the procedures listed in paragraphs (b)(5)(i) through (vi) of this section and a schedule for conducting these procedures. The routine procedures must provide an assessment of CPMS performance.

(i) Initial and subsequent calibration of the CPMS and acceptance criteria.

(ii) Determination and adjustment of the calibration drift of the CPMS.

(iii) Daily checks for indications that the system is responding. If the CPMS system includes an internal system check, the owner or operator may use the results to verify the system is responding, as long as the system provides an alarm to the owner or operator or the owner or operator checks the internal system results daily for

proper operation and the results are recorded.

(iv) Preventive maintenance of the CPMS, including spare parts inventory.

(v) Data recording, calculations and reporting.

(vi) Program of corrective action for a CPMS that is not operating properly.

(c) *Out-of-control periods.* For each CPMS installed to comply with applicable provisions in § 63.670 except for CPMS installed for pilot flame monitoring, the owner or operator shall comply with the out-of-control procedures described in paragraphs (c)(1) and (2) of this section.

(1) A CPMS is out-of-control if the zero (low-level), mid-level (if applicable) or high-level calibration drift exceeds two times the accuracy requirement of table 13 of this subpart.

(2) When the CPMS is out of control, the owner or operator shall take the necessary corrective action and repeat all necessary tests that indicate the system is out of control. The owner or operator shall take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established in this section is conducted. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. The owner or operator shall not use data recorded during periods the CPMS is out of control in data averages and calculations, used to report emissions or operating levels, as specified in paragraph (d)(3) of this section.

(d) *CPMS data reduction.* The owner or operator shall reduce data from a CPMS installed to comply with applicable provisions in § 63.670 as specified in paragraphs (d)(1) through (3) of this section.

(1) The owner or operator may round the data to the same number of significant digits used in that operating limit.

(2) Periods of non-operation of the process unit (or portion thereof) resulting in cessation of the emissions to which the monitoring applies must not be included in the 15-minute block averages.

(3) Periods when the CPMS is out of control must not be included in the 15-minute block averages.

(e) *Additional requirements for gas chromatographs.* For monitors used to determine compositional analysis for net heating value per § 63.670(j)(1), the

gas chromatograph must also meet the requirements of paragraphs (e)(1) through (3) of this section.

(1) The quality assurance requirements are in table 13 of this subpart.

(2) The calibration gases must meet one of the following options:

(i) The owner or operator must use a calibration gas or multiple gases that include all of compounds listed in paragraphs (e)(2)(i)(A) through (K) of this section that may be reasonably expected to exist in the flare gas stream and optionally include any of the compounds listed in paragraphs (e)(2)(i)(L) through (O) of this section. All of the calibration gases may be combined in one cylinder. If multiple calibration gases are necessary to cover all compounds, the owner or operator must calibrate the instrument on all of the gases.

(A) Hydrogen.

(B) Methane.

(C) Ethane.

(D) Ethylene.

(E) Propane.

(F) Propylene.

(G) n-Butane.

(H) iso-Butane.

(I) Butene (general). It is not necessary to separately speciate butene isomers, but the net heating value of trans-butene must be used for co-eluting butene isomers.

(J) 1,3-Butadiene. It is not necessary to separately speciate butadiene isomers, but you must use the response factor and net heating value of 1,3-butadiene for co-eluting butadiene isomers.

(K) n-Pentane. Use the response factor for n-pentane to quantify all C5+ hydrocarbons.

(L) Acetylene (optional).

(M) Carbon monoxide (optional).

(N) Propadiene (optional).

(O) Hydrogen sulfide (optional).

(ii) The owner or operator must use a surrogate calibration gas consisting of hydrogen and C1 through C5 normal hydrocarbons. All of the calibration gases may be combined in one cylinder. If multiple calibration gases are necessary to cover all compounds, the owner or operator must calibrate the instrument on all of the gases.

(3) If the owner or operator chooses to use a surrogate calibration gas under paragraph (e)(2)(ii) of this section, the owner or operator must comply with paragraphs (e)(3)(i) and (ii) of this section.

(i) Use the response factor for the nearest normal hydrocarbon (i.e., n-alkane) in the calibration mixture to quantify unknown components detected in the analysis.

(ii) Use the response factor for n-pentane to quantify unknown

components detected in the analysis that elute after n-pentane.

■ 34. The appendix to subpart CC is amended in table 6 by:

■ a. Revising the entries “63.5(d)(1)(ii)” and “63.5(f)”;

■ b. Removing the entry “63.6(e)(1)”;

■ c. Adding, in numerical order, the entries “63.6(e)(1)(i) and (ii)” and “63.6(e)(1)(iii)”;

■ d. Revising the entries “63.6(e)(3)(i),” “63.6(e)(3)(iii)–63.6(e)(3)(ix),” and “63.6(f)(1)”;

■ e. Removing the entry “63.6(f)(2) and (3)”;

■ f. Adding, in numerical order, the entries “63.6(f)(2)” and “63.6(f)(3)”;

■ g. Removing the entry “63.6(h)(1) and 63.6(h)(2)”;

■ h. Adding, in numerical order, the entries “63.6(h)(1)” and “63.6(h)(2)”;

■ i. Revising the entries “63.7(b)” and “63.7(e)(1)”;

■ j. Removing the entry “63.8(a)”;

■ k. Adding, in numerical order, the entries “63.8(a)(1) and (2),” “63.8(a)(3),” and “63.8(a)(4)”;

■ l. Revising the entry “63.8(c)(1)”;

■ m. Adding, in numerical order, the entries “63.8(c)(1)(i)” and “63.8(c)(1)(iii)”;

■ n. Revising the entries “63.8(c)(4),” “63.8(c)(5)–63.8(c)(8),” “63.8(d),” “63.8(e),” “63.8(g),” “63.10(b)(2)(i),” “63.10(b)(2)(ii),” “63.10(b)(2)(iv),” “63.10(b)(2)(v),” and “63.10(b)(2)(vii)”;

■ o. Removing the entry “63.10(c)(9)–63.10(c)(15)”;

■ p. Adding, in numerical order, the entries “63.10(c)(9),” “63.10(c)(10)–63.10(c)(11),” and “63.10(c)(12)–63.10(c)(15)”;

■ q. Revising the entry “63.10(d)(2)”;

■ r. Removing the entries “63.10(d)(5)(i)” and “63.10(d)(5)(ii)”;

■ s. Adding, in numerical order, the entry “63.10(d)(5)”;

■ t. Removing the entry “63.11–63.16”;

■ u. Adding, in numerical order, the entries “63.11” and “63.12–63.16”;

■ v. Revising footnote a.

■ w. Removing footnote b.

The revisions and additions read as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

TABLE 6—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC ^a

Reference	Applies to subpart CC	Comment
63.5(d)(1)(ii)	Yes	Except that for affected sources subject to this subpart, emission estimates specified in § 63.5(d)(1)(ii)(H) are not required, and § 63.5(d)(1)(ii)(G) and (I) are Reserved and do not apply.
63.5(f)	Yes	Except that the cross-reference in § 63.5(f)(2) to § 63.9(b)(2) does not apply.
63.6(e)(1)(i) and (ii)	No	See § 63.642(n) for general duty requirement.
63.6(e)(1)(iii)	Yes.	
63.6(e)(3)(i)	No.	
63.6(e)(3)(iii)–63.6(e)(3)(ix)	No.	
63.6(f)(1)	No.	
63.6(f)(2)	Yes	Except the phrase “as specified in § 63.7(c)” in § 63.6(f)(2)(iii)(D) does not apply because this subpart does not require a site-specific test plan.
63.6(f)(3)	Yes	Except the cross-references to § 63.6(f)(1) and (e)(1)(i) are changed to § 63.642(n).
63.6(h)(1)	No.	
63.6(h)(2)	Yes	Except § 63.6(h)(2)(ii), which is reserved.
63.7(b)	Yes	Except this subpart requires notification of performance test at least 30 days (rather than 60 days) prior to the performance test.
63.7(e)(1)	No	See § 63.642(d)(3).
63.8(a)(1) and (2)	Yes.	
63.8(a)(3)	No	Reserved.
63.8(a)(4)	Yes	Except that for a flare complying with § 63.670, the cross-reference to § 63.11 in this paragraph does not include § 63.11(b).
63.8(c)(1)	Yes	Except § 63.8(c)(1)(i) and (iii).
63.8(c)(1)(i)	No	See § 63.642(n).
63.8(c)(1)(iii)	No.	

TABLE 6—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC ^a—Continued

Reference	Applies to subpart CC	Comment
63.8(c)(4)	Yes	Except that for sources other than flares, this subpart specifies the monitoring cycle frequency specified in § 63.8(c)(4)(ii) is “once every hour” rather than “for each successive 15-minute period.”
63.8(c)(5)–63.8(c)(8)	No	This subpart specifies continuous monitoring system requirements.
63.8(d)	No	This subpart specifies quality control procedures for continuous monitoring systems.
63.8(e)	Yes.	
63.8(g)	No	This subpart specifies data reduction procedures in §§ 63.655(i)(3) and 63.671(d).
63.10(b)(2)(i)	No.	
63.10(b)(2)(ii)	No	§ 63.655(i) specifies the records that must be kept.
63.10(b)(2)(iv)	No.	
63.10(b)(2)(v)	No.	
63.10(b)(2)(vii)	No	§ 63.655(i) specifies records to be kept for parameters measured with continuous monitors.
63.10(c)(9)	No	Reserved.
63.10(c)(10)–63.10(c)(11)	No	§ 63.655(i) specifies the records that must be kept.
63.10(c)(12)–63.10(c)(15)	No.	
63.10(d)(2)	No	Although § 63.655(f) specifies performance test reporting, EPA may approve other timeframes for submittal of performance test data.
63.10(d)(5)	No	§ 63.655(g) specifies the reporting requirements.
63.11	Yes	Except that flares complying with § 63.670 are not subject to the requirements of § 63.11(b).
63.12–63.16	Yes.	

^a Wherever subpart A of this part specifies “postmark” dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

- 35. The appendix to subpart CC is amended in table 10 by:
- a. Redesignating the entry “Flare” as “Flare (if meeting the requirements of §§ 63.643 and 63.644)”;
- b. Adding the entry “Flare (if meeting the requirements of §§ 63.670 and

- 63.671)” after newly redesignated entry “Flare (if meeting the requirements of §§ 63.643 and 63.644)”;
- c. Revising the entry “All control devices”; and
- d. Revising footnote i.

The revisions and additions read as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

TABLE 10—MISCELLANEOUS PROCESS VENTS—MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAP EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME

Control device	Parameters to be monitored ^a	Recordkeeping and reporting requirements for monitored parameters
Flare (if meeting the requirements of §§ 63.670 and 63.671).	The parameters specified in § 63.670.	1. Records as specified in § 63.655(i)(9).
All control devices	Presence of flow diverted to the atmosphere from the control device (§ 63.644(c)(1)) or	2. Report information as specified in § 63.655(g)(11)—PR. ⁹
		1. Hourly records of whether the flow indicator was operating and whether flow was detected at any time during each hour.
		Record and report the times and durations of all periods when the vent stream is diverted through a bypass line or the monitor is not operating—PR. ⁹

TABLE 10—MISCELLANEOUS PROCESS VENTS—MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAP EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME—Continued

Control device	Parameters to be monitored ^a	Recordkeeping and reporting requirements for monitored parameters
	Monthly inspections of sealed valves (§ 63.644(c)(2)).	1. Records that monthly inspections were performed. 2. Record and report all monthly inspections that show the valves are not closed or the seal has been changed—PR. ^g

^aRegulatory citations are listed in parentheses.

^gPR = Periodic Reports described in § 63.655(g).

ⁱProcess vents that are routed to refinery fuel gas systems are not regulated under this subpart provided that on and after January 30, 2019, any flares receiving gas from that fuel gas system are in compliance with § 63.670. No monitoring, recordkeeping, or reporting is required for boilers and process heaters that combust refinery fuel gas.

■ 36. The appendix to subpart CC is amended by adding table 11 to read as follows:

**Appendix to Subpart CC of Part 63—
Tables**

* * * * *

TABLE 11—COMPLIANCE DATES AND REQUIREMENTS

If the construction/reconstruction date ^a is . . .	Then the owner or operator must comply with . . .	And the owner or operator must achieve compliance . . .	Except as provided in . . .
(1) After June 30, 2014	(i) Requirements for new sources in §§ 63.640 through 63.642, 63.647, 63.650 through 63.653, and 63.656 through 63.660. (ii) The new source requirements in § 63.654 for heat exchange systems.	Upon initial startup or February 1, 2016, whichever is later. Upon initial startup or October 28, 2009, whichever is later.	§ 63.640(k), (l) and (m). § 63.640(k), (l) and (m).
(2) After September 4, 2007 but on or before June 30, 2014.	(i) Requirements for new sources in §§ 63.640 through 63.653 and 63.656 ^{b,c} . (ii) Requirements for new sources in §§ 63.640 through 63.645, §§ 63.647 through 63.653, and §§ 63.656 and 63.657 ^b . (iii) Requirements for existing sources in § 63.658. (iv) Requirements for new sources in § 63.660 ^c . (v) The new source requirements in § 63.654 for heat exchange systems.	Upon initial startup On or before January 30, 2019 On or before January 30, 2018 On or before April 29, 2016 Upon initial startup or October 28, 2009, whichever is later.	§ 63.640(k), (l) and (m). § 63.640(k), (l) and (m). § 63.640(k), (l) and (m). § 63.640(k), (l) and (m). § 63.640(k), (l) and (m).
(3) After July 14, 1994 but on or before September 4, 2007.	(i) Requirements for new sources in §§ 63.640 through 63.653 and 63.656 ^{d,e} . (ii) Requirements for new sources in §§ 63.640 through 63.645, 63.647 through 63.653, and 63.656 and 63.657 ^d . (iii) Requirements for existing sources in § 63.658. (iv) Requirements for new sources in § 63.660 ^e . (v) The existing source requirements in § 63.654 for heat exchange systems.	Upon initial startup or August 18, 1995, whichever is later. On or before January 30, 2019 On or before January 30, 2018 On or before April 29, 2016 On or before October 29, 2012	§ 63.640(k), (l) and (m). § 63.640(k), (l) and (m). § 63.640(k), (l) and (m). § 63.640(k), (l) and (m). § 63.640(k), (l) and (m).
(4) On or before July 14, 1994	(i) Requirements for existing sources in §§ 63.640 through 63.653 and 63.656 ^{f,g} . (ii) Requirements for existing sources in §§ 63.640 through 63.645, 63.647 through 63.653, and 63.656 and 63.657 ^f .	(a) On or before August 18, 1998 On or before January 30, 2019	(1) § 63.640(k), (l) and (m). (2) § 63.6(c)(5) of subpart A of this part or unless an extension has been granted by the Administrator as provided in § 63.6(i) of subpart A of this part. § 63.640(k), (l) and (m).

TABLE 11—COMPLIANCE DATES AND REQUIREMENTS—Continued

If the construction/reconstruction date ^a is . . .	Then the owner or operator must comply with . . .	And the owner or operator must achieve compliance . . .	Except as provided in . . .
	(iii) Requirements for existing sources in § 63.658.	On or before January 30, 2018	§ 63.640(k), (l) and (m).
	(iv) Requirements for existing sources in § 63.660 ^g .	On or before April 29, 2016	§ 63.640(k), (l) and (m).
(v) The existing source requirements in § 63.654 for heat exchange systems	On or before October 29, 2012	§ 63.640(k), (l) and (m).	

^aFor purposes of this table, the construction/reconstruction date means the date of construction or reconstruction of an entire affected source or the date of a process unit addition or change meeting the criteria in § 63.640(i) or (j). If a process unit addition or change does not meet the criteria in § 63.640(i) or (j), the process unit shall comply with the applicable requirements for existing sources.

^bBetween the compliance dates in items (2)(i) and (2)(ii) of this table, the owner or operator may elect to comply with either the requirements in item (2)(i) or item (2)(ii) of this table. The requirements in item (2)(i) of this table no longer apply after demonstrated compliance with the requirements in item (2)(ii) of this table.

^cBetween the compliance dates in items (2)(i) and (2)(iv) of this table, the owner or operator may elect to comply with either the requirements in item (2)(i) or item (2)(iv) of this table. The requirements in item (2)(i) of this table no longer apply after demonstrated compliance with the requirements in item (2)(iv) of this table.

^dBetween the compliance dates in items (3)(i) and (3)(ii) of this table, the owner or operator may elect to comply with either the requirements in item (3)(i) or item (3)(ii) of this table. The requirements in item (3)(i) of this table no longer apply after demonstrated compliance with the requirements in item (3)(ii) of this table.

^eBetween the compliance dates in items (3)(i) and (3)(iv) of this table, the owner or operator may elect to comply with either the requirements in item (3)(i) or item (3)(iv) of this table. The requirements in item (3)(i) of this table no longer apply after demonstrated compliance with the requirements in item (3)(iv) of this table.

^fBetween the compliance dates in items (4)(i) and (4)(ii) of this table, the owner or operator may elect to comply with either the requirements in item (4)(i) or item (4)(ii) of this table. The requirements in item (4)(i) of this table no longer apply after demonstrated compliance with the requirements in item (4)(ii) of this table.

^gBetween the compliance dates in items (4)(i) and (4)(iv) of this table, the owner or operator may elect to comply with either the requirements in item (4)(i) or item (4)(iv) of this table. The requirements in item (4)(i) of this table no longer apply after demonstrated compliance with the requirements in item (4)(iv) of this table.

■ 37. The appendix to subpart CC is amended by adding table 12 to read as follows:

**Appendix to Subpart CC of Part 63—
Tables**

* * * * *

TABLE 12—INDIVIDUAL COMPONENT PROPERTIES

Component	Molecular formula	MW _i (pounds per pound-mole)	CMN _i (mole per mole)	NHV _i (British thermal units per standard cubic foot)	LFL _i (volume %)
Acetylene	C ₂ H ₂	26.04	2	1,404	2.5
Benzene	C ₆ H ₆	78.11	6	3,591	1.3
1,2-Butadiene	C ₄ H ₆	54.09	4	2,794	2.0
1,3-Butadiene	C ₄ H ₆	54.09	4	2,690	2.0
iso-Butane	C ₄ H ₁₀	58.12	4	2,957	1.8
n-Butane	C ₄ H ₁₀	58.12	4	2,968	1.8
cis-Butene	C ₄ H ₈	56.11	4	2,830	1.6
iso-Butene	C ₄ H ₈	56.11	4	2,928	1.8
trans-Butene	C ₄ H ₈	56.11	4	2,826	1.7
Carbon Dioxide	CO ₂	44.01	1	0	∞
Carbon Monoxide	CO	28.01	1	316	12.5
Cyclopropane	C ₃ H ₆	42.08	3	2,185	2.4
Ethane	C ₂ H ₆	30.07	2	1,595	3.0
Ethylene	C ₂ H ₄	28.05	2	1,477	2.7
Hydrogen	H ₂	2.02	0	1,212 ^a	4.0
Hydrogen Sulfide	H ₂ S	34.08	0	587	4.0
Methane	CH ₄	16.04	1	896	5.0
Methyl-Acetylene	C ₃ H ₄	40.06	3	2,088	1.7
Nitrogen	N ₂	28.01	0	0	∞
Oxygen	O ₂	32.00	0	0	∞
Pentane+ (C5+)	C ₅ H ₁₂	72.15	5	3,655	1.4
Propadiene	C ₃ H ₄	40.06	3	2,066	2.16
Propane	C ₃ H ₈	44.10	3	2,281	2.1
Propylene	C ₃ H ₆	42.08	3	2,150	2.4
Water	H ₂ O	18.02	0	0	∞

^a The theoretical net heating value for hydrogen is 274 Btu/scf, but for the purposes of the flare requirement in this subpart, a net heating value of 1,212 Btu/scf shall be used.

■ 38. The appendix to subpart CC is amended by adding table 13 to read as follows:

**Appendix to Subpart CC of Part 63—
Tables**

* * * * *

TABLE 13—CALIBRATION AND QUALITY CONTROL REQUIREMENTS FOR CPMS

Parameter	Minimum accuracy requirements	Calibration requirements
Temperature	±1 percent over the normal range of temperature measured, expressed in degrees Celsius (C), or 2.8 degrees C, whichever is greater.	Conduct calibration checks at least annually; conduct calibration checks following any period of more than 24 hours throughout which the temperature exceeded the manufacturer's specified maximum rated temperature or install a new temperature sensor. At least quarterly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion, unless the CPMS has a redundant temperature sensor. Record the results of each calibration check and inspection. Locate the temperature sensor in a position that provides a representative temperature; shield the temperature sensor system from electromagnetic interference and chemical contaminants.
Flow Rate for All Flows Other Than Flare Vent Gas.	±5 percent over the normal range of flow measured or 1.9 liters per minute (0.5 gallons per minute), whichever is greater, for liquid flow. ±5 percent over the normal range of flow measured or 280 liters per minute (10 cubic feet per minute), whichever is greater, for gas flow. ±5 percent over the normal range measured for mass flow.	Conduct a flow sensor calibration check at least biennially (every two years); conduct a calibration check following any period of more than 24 hours throughout which the flow rate exceeded the manufacturer's specified maximum rated flow rate or install a new flow sensor. At least quarterly, inspect all components for leakage, unless the CPMS has a redundant flow sensor. Record the results of each calibration check and inspection. Locate the flow sensor(s) and other necessary equipment (such as straightening vanes) in a position that provides representative flow; reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.
Flare Vent Gas Flow Rate	±20 percent of flow rate at velocities ranging from 0.03 to 0.3 meters per second (0.1 to 1 feet per second). ±5 percent of flow rate at velocities greater than 0.3 meters per second (1 feet per second).	Conduct a flow sensor calibration check at least biennially (every two years); conduct a calibration check following any period of more than 24 hours throughout which the flow rate exceeded the manufacturer's specified maximum rated flow rate or install a new flow sensor. At least quarterly, inspect all components for leakage, unless the CPMS has a redundant flow sensor. Record the results of each calibration check and inspection. Locate the flow sensor(s) and other necessary equipment (such as straightening vanes) in a position that provides representative flow; reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.
Pressure	±5 percent over the normal operating range or 0.12 kilopascals (0.5 inches of water column), whichever is greater.	Review pressure sensor readings at least once a week for straightline (unchanging) pressure and perform corrective action to ensure proper pressure sensor operation if blockage is indicated. Using an instrument recommended by the sensor's manufacturer, check gauge calibration and transducer calibration annually; conduct calibration checks following any period of more than 24 hours throughout which the pressure exceeded the manufacturer's specified maximum rated pressure or install a new pressure sensor. At least quarterly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage, unless the CPMS has a redundant pressure sensor. Record the results of each calibration check and inspection. Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure and minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.
Net Heating Value by Calorimeter ..	±2 percent of span	Specify calibration requirements in your site specific CPMS monitoring plan. Calibration requirements should follow manufacturer's recommendations at a minimum. Temperature control (heated and/or cooled as necessary) the sampling system to ensure proper year-round operation. Where feasible, select a sampling location at least two equivalent diameters downstream from and 0.5 equivalent diameters upstream from the nearest disturbance. Select the sampling location at least two equivalent duct diameters from the nearest control device, point of pollutant generation, air in-leakages, or other point at which a change in the pollutant concentration or emission rate occurs.

TABLE 13—CALIBRATION AND QUALITY CONTROL REQUIREMENTS FOR CPMS—Continued

Parameter	Minimum accuracy requirements	Calibration requirements
Net Heating Value by Gas Chromatograph.	As specified in Performance Specification 9 of 40 CFR part 60, appendix B	Follow the procedure in Performance Specification 9 of 40 CFR part 60, appendix B, except that a single daily mid-level calibration check can be used (rather than triplicate analysis), the multi-point calibration can be conducted quarterly (rather than monthly), and the sampling line temperature must be maintained at a minimum temperature of 60 °C (rather than 120 °C).
Hydrogen analyzer	±2 percent over the concentration measured or 0.1 volume percent, whichever is greater.	Specify calibration requirements in your site specific CPMS monitoring plan. Calibration requirements should follow manufacturer's recommendations at a minimum. Select the sampling location at least two equivalent duct diameters from the nearest control device, point of pollutant generation, air in-leakages, or other point at which a change in the pollutant concentration occurs.

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■ 39. Section 63.1562 is amended by revising paragraphs (b)(3) and (f)(5) to read as follows:

§ 63.1562 What parts of my plant are covered by this subpart?

* * * * *

(b) * * *

(3) The process vent or group of process vents on Claus or other types of sulfur recovery plant units or the tail gas treatment units serving sulfur recovery plants that are associated with sulfur recovery.

* * * * *

(f) * * *

(5) Gaseous streams routed to a fuel gas system, provided that on and after January 30, 2019, any flares receiving gas from the fuel gas system are subject to § 63.670.

■ 40. Section 63.1564 is amended by:

- a. Revising paragraphs (a)(1) and (2);
- b. Adding paragraph (a)(5);
- c. Removing the equation following paragraph (b)(4)(ii) and adding it after paragraph (b)(4)(iii) introductory text;
- d. Revising paragraphs (b)(2), (b)(4)(i) and (ii), and (b)(4)(iv); and
- e. Adding paragraph (c)(5).

The revisions and additions read as follows:

§ 63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?

(a) * * *

(1) Except as provided in paragraph (a)(5) of this section, meet each emission limitation in Table 1 of this subpart that applies to you. If your catalytic cracking unit is subject to the NSPS for PM in § 60.102 of this chapter or is subject to § 60.102a(b)(1) of this chapter, you must meet the emission limitations for NSPS units. If your catalytic cracking unit is not subject to the NSPS for PM, you can choose from the four options in paragraphs (a)(1)(i) through (vi) of this section:

(i) You can elect to comply with the NSPS for PM in § 60.102 of this chapter (Option 1a);

(ii) You can elect to comply with the NSPS for PM coke burn-off emission limit in § 60.102a(b)(1) of this chapter (Option 1b);

(iii) You can elect to comply with the NSPS for PM concentration limit in § 60.102a(b)(1) of this chapter (Option 1c);

(iv) You can elect to comply with the PM per coke burn-off emission limit in § 60.102a(b)(1) of this chapter (Option 2);

(v) You can elect to comply with the Nickel (Ni) lb/hr emission limit (Option 3); or

(vi) You can elect to comply with the Ni per coke burn-off emission limit (Option 4).

(2) Comply with each operating limit in Table 2 of this subpart that applies to you. When a specific control device may be monitored using more than one continuous parameter monitoring system, you may select the parameter with which you will comply. You must provide notice to the Administrator (or

other designated authority) if you elect to change the monitoring option.

* * * * *

(5) During periods of startup, shutdown and hot standby, you can choose from the two options in paragraphs (a)(5)(i) and (ii) of this section:

(i) You can elect to comply with the requirements in paragraphs (a)(1) and (2) of this section, except catalytic cracking units controlled using a wet scrubber must maintain only the liquid to gas ratio operating limit (the pressure drop operating limit does not apply); or

(ii) You can elect to maintain the inlet velocity to the primary internal cyclones of the catalytic cracking unit catalyst regenerator at or above 20 feet per second.

(b) * * *

(2) Conduct a performance test for each catalytic cracking unit according to the requirements in § 63.1571 and under the conditions specified in Table 4 of this subpart.

* * * * *

(4) * * *

(i) If you elect Option 1b or Option 2 in paragraph (a)(1)(ii) or (iv) of this section, compute the PM emission rate (lb/1,000 lb of coke burn-off) for each run using Equations 1, 2, and 3 (if applicable) of this section and the site-specific opacity limit, if applicable, using Equation 4 of this section as follows:

$$R_c = K_1 Q_r (\%CO_2 + \%CO) + K_2 Q_a - K_3 Q_r \left[\left(\frac{\%CO}{2} \right) + \%CO_2 + \%O_2 \right] + K_3 Q_{oxy} (\%O_{xy}) \quad (\text{Eq. 1})$$

Where:

R_c = Coke burn-off rate, kg/hr (lb/hr);

Q_r = Volumetric flow rate of exhaust gas from catalyst regenerator before adding air or

gas streams. Example: You may measure upstream or downstream of an

electrostatic precipitator, but you must measure upstream of a carbon monoxide boiler, dscm/min (dscf/min). You may use the alternative in either § 63.1573(a)(1) or (2), as applicable, to calculate Q_r;

Q_a = Volumetric flow rate of air to catalytic cracking unit catalyst regenerator, as determined from instruments in the catalytic cracking unit control room, dscm/min (dscf/min);

%CO₂ = Carbon dioxide concentration in regenerator exhaust, percent by volume (dry basis);

%CO = Carbon monoxide concentration in regenerator exhaust, percent by volume (dry basis);

%O₂ = Oxygen concentration in regenerator exhaust, percent by volume (dry basis);

K₁ = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) (0.0186 (lb-min)/(hr-dscf-%));

K₂ = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm) (0.1303 (lb-min)/(hr-dscf));

K₃ = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) (0.0062 (lb-min)/(hr-dscf-%));

Q_{oxy} = Volumetric flow rate of oxygen-enriched air stream to regenerator, as determined from instruments in the catalytic cracking unit control room, dscm/min (dscf/min); and

%O_{xy} = Oxygen concentration in oxygen-enriched air stream, percent by volume (dry basis).

$$E = \frac{K \times C_s \times Q_{sd}}{R_c} \quad (\text{Eq. } 2)$$

Where:

E = Emission rate of PM, kg/1,000 kg (lb/1,000 lb) of coke burn-off;

C_s = Concentration of PM, g/dscm (lb/dscf);

Q_{sd} = Volumetric flow rate of the catalytic cracking unit catalyst regenerator flue gas as measured by Method 2 in appendix A-1 to part 60 of this chapter, dscm/hr (dscf/hr);

R_c = Coke burn-off rate, kg coke/hr (1,000 lb coke/hr); and

K = Conversion factor, 1.0 (kg²/g)/(1,000 kg (1,000 lb/(1,000 lb))).

$$E_s = 1.0 + A \left(\frac{H}{R_c} \right) K' \quad (\text{Eq. } 3)$$

Where:

E_s = Emission rate of PM allowed, kg/1,000 kg (1b/1,000 lb) of coke burn-off in catalyst regenerator;

1.0 = Emission limitation, kg coke/1,000 kg (1b coke/1,000 lb);

A = Allowable incremental rate of PM emissions. Before August 1, 2017, A = 0.18 g/million cal (0.10 lb/million Btu). On or after August 1, 2017, A = 0 g/million cal (0 lb/million Btu);

H = Heat input rate from solid or liquid fossil fuel, million cal/hr (million Btu/hr). Make sure your permitting authority

approves procedures for determining the heat input rate;

R_c = Coke burn-off rate, kg coke/hr (1,000 lb coke/hr) determined using Equation 1 of this section; and

K' = Conversion factor to units to standard, 1.0 (kg₂/g)/(1,000 kg) (10₃ lb/(1,000 lb)).

$$\text{Opacity Limit} = \text{Opacity}_{st} \times \left(\frac{1 \text{ lb} / 1000 \text{ lb coke burn}}{\text{PME}R_{st}} \right) \quad (\text{Eq. } 4)$$

Where:

Opacity Limit = Maximum permissible hourly average opacity, percent, or 10 percent, whichever is greater;

Opacity_{st} = Hourly average opacity measured during the source test, percent; and

PME_R_{st} = PM emission rate measured during the source test, lb/1,000 lb coke burn.

(ii) If you elect Option 1c in paragraph (a)(1)(iii) of this section, the PM concentration emission limit, determine the average PM concentration from the initial performance test used to certify your PM CEMS.

* * * * *

(iv) If you elect Option 4 in paragraph (a)(1)(vi) of this section, the Ni per coke

burn-off emission limit, compute your Ni emission rate using Equations 1 and 8 of this section and your site-specific Ni operating limit (if you use a continuous opacity monitoring system) using Equations 9 and 10 of this section as follows:

$$E_{Ni_2} = \frac{C_{Ni} \times Q_{sd}}{R_c} \quad (\text{Eq. } 8)$$

Where:

E_{Ni2} = Normalized mass emission rate of Ni, mg/kg coke (lb/1,000 lb coke).

$$\text{Opacity}_2 = \frac{1.0 \text{ mg/kg coke}}{\text{NiEm}R_{2st}} \times \text{Opacity}_{st} \quad (\text{Eq. } 9)$$

Where:

Opacity₂ = Opacity value for use in Equation 10 of this section, percent, or 10 percent, whichever is greater; and

NiEmR2_{st} = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 8 of this

section for each of the performance test runs, mg/kg coke.

$$Ni\ Operating\ Limit_2 = Opacity_2 \times E-Cat_{st} \times \frac{Q_{mon,st}}{R_{c,st}} \quad (Eq. 10)$$

Where:

Ni Operating Limit₂ = Maximum permissible hourly average Ni operating limit, percent-ppmw-acfm-hr/kg coke, *i.e.*, your site-specific Ni operating limit; and
R_{c,st} = Coke burn rate from Equation 1 of this section, as measured during the initial performance test, kg coke/hr.

* * * * *

(c) * * *

(5) If you elect to comply with the alternative limit in paragraph (a)(5)(ii) of this section during periods of startup, shutdown, and hot standby, demonstrate continuous compliance by:

(i) Collecting the volumetric flow rate from the catalyst regenerator (in acfm) and determining the average flow rate for each hour. For events lasting less than one hour, determine the average flow rate during the event.

(ii) Determining the cumulative cross-sectional area of the primary internal cyclone inlets in square feet (ft²) using design drawings of the primary (first-stage) internal cyclones to determine the inlet cross-sectional area of each primary internal cyclone and summing the cross-sectional areas for all primary internal cyclones in the catalyst regenerator or, if primary cyclones are identical, you may alternatively determine the inlet cross-sectional area of one primary internal cyclone using design drawings and multiply that area by the total number of primary internal cyclones in the catalyst regenerator.

(iii) Calculating the inlet velocity to the primary internal cyclones in square feet per second (ft²/sec) by dividing the average volumetric flow rate (acfm) by the cumulative cross-sectional area of the primary internal cyclone inlets (ft²) and by 60 seconds/minute (for unit conversion).

(iv) Maintaining the inlet velocity to the primary internal cyclones at or above 20 feet per second for each hour during the startup, shutdown, or hot standby event or, for events lasting less than 1 hour, for the duration of the event.

■ 41. Section 63.1565 is amended by revising paragraph (a)(1) introductory text and adding paragraph (a)(5) to read as follows:

§ 63.1565 What are my requirements for organic HAP emissions from catalytic cracking units?

(a) * * *

(1) Except as provided in paragraph (a)(5) of this section, meet each emission limitation in Table 8 of this subpart that applies to you. If your catalytic cracking unit is subject to the NSPS for carbon monoxide (CO) in § 60.103 of this chapter or is subject to § 60.102a(b)(4) of this chapter, you must meet the emission limitations for NSPS units. If your catalytic cracking unit is not subject to the NSPS for CO, you can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

* * * * *

(5) During periods of startup, shutdown and hot standby, you can choose from the two options in paragraphs (a)(5)(i) and (ii) of this section:

(i) You can elect to comply with the requirements in paragraphs (a)(1) and (2) of this section; or

(ii) You can elect to maintain the oxygen (O₂) concentration in the exhaust gas from your catalyst regenerator at or above 1 volume percent (dry basis).

* * * * *

■ 42. Section 63.1566 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i), and (a)(4) to read as follows:

§ 63.1566 What are my requirements for organic HAP emissions from catalytic reforming units?

(a) * * *

(1) Meet each emission limitation in Table 15 of this subpart that applies to you. You can choose from the two options in paragraphs (a)(1)(i) and (ii) of this section.

(i) You can elect to vent emissions of total organic compounds (TOC) to a flare (Option 1). On and after January 30, 2019, the flare must meet the requirements of § 63.670. Prior to January 30, 2019, the flare must meet the control device requirements in § 63.11(b) or the requirements of § 63.670.

* * * * *

(4) The emission limitations in Tables 15 and 16 of this subpart do not apply to emissions from process vents during passive depressuring when the reactor vent pressure is 5 pounds per square inch gauge (psig) or less. The emission limitations in Tables 15 and 16 of this subpart do apply to emissions from process vents during active purging operations (when nitrogen or other purge gas is actively introduced to the reactor vessel) or active depressuring (using a vacuum pump, ejector system, or similar device) regardless of the reactor vent pressure.

* * * * *

■ 43. Section 63.1568 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(i) and adding paragraph (a)(4) to read as follows:

§ 63.1568 What are my requirements for HAP emissions from sulfur recovery units?

(a) * * *

(1) Meet each emission limitation in Table 29 of this subpart that applies to you. If your sulfur recovery unit is subject to the NSPS for sulfur oxides in § 60.104 or § 60.102a(f)(1) of this chapter, you must meet the emission limitations for NSPS units. If your sulfur recovery unit is not subject to one of these NSPS for sulfur oxides, you can choose from the options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to meet the NSPS requirements in § 60.104(a)(2) or § 60.102a(f)(1) of this chapter (Option 1); or

* * * * *

(4) During periods of startup and shutdown, you can choose from the three options in paragraphs (a)(4)(i) through (iii) of this section.

(i) You can elect to comply with the requirements in paragraphs (a)(1) and (2) of this section.

(ii) You can elect to send any startup or shutdown purge gases to a flare. On and after January 30, 2019, the flare must meet the requirements of § 63.670. Prior to January 30, 2019, the flare must meet the design and operating requirements in § 63.11(b) or the requirements of § 63.670.

(iii) You can elect to send any startup or shutdown purge gases to a thermal oxidizer or incinerator operated at a

minimum hourly average temperature of 1,200 degrees Fahrenheit in the firebox and a minimum hourly average outlet oxygen (O₂) concentration of 2 volume percent (dry basis).

* * * * *

■ 44. Section 63.1570 is amended by revising paragraphs (a) through (d) and removing paragraph (g) to read as follows:

§ 63.1570 What are my general requirements for complying with this subpart?

(a) You must be in compliance with all of the non-opacity standards in this subpart at all times.

(b) You must be in compliance with the opacity and visible emission limits in this subpart at all times.

(c) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. 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.

(d) During the period between the compliance date specified for your affected source and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been set, you must maintain a log that documents the procedures used to minimize emissions from process and emissions control equipment according to the general duty in paragraph (c) of this section.

* * * * *

■ 45. Section 63.1571 is amended by:

■ a. Adding paragraphs (a)(5) and (6);

■ b. Revising paragraph (b)(1);

■ c. Removing paragraph (b)(4);

■ d. Redesignating paragraph (b)(5) as paragraph (b)(4); and

■ e. Revising the first sentence of paragraph (d)(2) and paragraph (d)(4).

The revisions and additions read as follows:

§ 63.1571 How and when do I conduct a performance test or other initial compliance demonstration?

(a) * * *

(5) *Periodic performance testing for PM or Ni.* Except as provided in paragraphs (a)(5)(i) and (ii) of this section, conduct a periodic performance test for PM or Ni for each catalytic cracking unit at least once every 5 years according to the requirements in Table 4 of this subpart. You must conduct the first periodic performance test no later than August 1, 2017.

(i) Catalytic cracking units monitoring PM concentration with a PM CEMS are not required to conduct a periodic PM performance test.

(ii) Conduct a performance test annually if you comply with the emission limits in Item 1 (NSPS subpart J) or Item 4 (Option 1a) in Table 1 of this subpart and the PM emissions measured during the most recent performance source test are greater than 0.80 g/kg coke burn-off.

(6) *One-time performance testing for HCN.* Conduct a performance test for HCN from each catalytic cracking unit no later than August 1, 2017 according to the applicable requirements in paragraphs (a)(6)(i) and (ii) of this section.

(i) If you conducted a performance test for HCN for a specific catalytic cracking unit between March 31, 2011 and February 1, 2016, you may submit a request to the Administrator to use the previously conducted performance test results to fulfill the one-time performance test requirement for HCN for each of the catalytic cracking units tested according to the requirements in paragraphs (a)(6)(i)(A) through (D) of this section.

(A) The request must include a copy of the complete source test report, the date(s) of the performance test and the test methods used. If available, you must also indicate whether the catalytic cracking unit catalyst regenerator was operated in partial or complete combustion mode during the test, the control device configuration, including whether platinum or palladium combustion promoters were used during the test, and the CO concentration (measured using CO CEMS or manual test method) for each test run.

(B) You must submit a separate request for each catalytic cracking unit tested and you must submit each request to the Administrator no later than March 30, 2016.

(C) The Administrator will evaluate each request with respect to the completeness of the request, the completeness of the submitted test report and the appropriateness of the

test methods used. The Administrator will notify the facility within 60 days of receipt of the request if it is approved or denied. If the Administrator fails to respond to the facility within 60 days of receipt of the request, the request will be automatically approved.

(D) If the request is approved, you do not need to conduct an additional HCN performance test. If the request is denied, you must conduct an additional HCN performance test following the requirements in (a)(6)(ii) of this section.

(ii) Unless you receive approval to use a previously conducted performance test to fulfill the one-time performance test requirement for HCN for your catalytic cracking unit as provided in paragraph (a)(6)(i) of this section, conduct a performance test for HCN for each catalytic cracking unit no later than August 1, 2017 according to following requirements:

(A) Select sampling port location, determine volumetric flow rate, conduct gas molecular weight analysis and measure moisture content as specified in either Item 1 of Table 4 of this subpart or Item 1 of Table 11 of this subpart.

(B) Measure HCN concentration using Method 320 of appendix A of this part. The method ASTM D6348–03 (Reapproved 2010) including Annexes A1 through A8 (incorporated by reference—see § 63.14) is an acceptable alternative to EPA Method 320 of appendix A of this part. The method ASTM D6348–12e1 (incorporated by reference—see § 63.14) is an acceptable alternative to EPA Method 320 of appendix A of this part with the following two caveats:

(1) The test plan preparation and implementation in the Annexes to ASTM D6348–03 (Reapproved 2010), Sections A1 through A8 are mandatory; and

(2) In ASTM D6348–03 (Reapproved 2010) 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 70% ≤ R ≤ 130%. 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 $\times$ 100 $\div$ % R.

(C) Measure CO concentration as specified in either Item 2 or 3a of Table 11 of this subpart.

(D) Record and include in the test report an indication of whether the catalytic cracking unit catalyst regenerator was operated in partial or complete combustion mode and the control device configuration, including whether platinum or palladium combustion promoters were used during the test.

(b) * * *

(1) Performance tests shall be conducted according to the provisions of § 63.7(e) except that performance tests shall be conducted at maximum representative operating capacity for the process. During the performance test, you must operate the control device at either maximum or minimum representative operating conditions for monitored control device parameters, whichever results in lower emission reduction. You must not conduct a performance test during startup, shutdown, periods when the control device is bypassed or periods when the process, monitoring equipment or control device is not operating properly. You may not conduct performance tests during periods of malfunction. You 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 the test was conducted at maximum representative operating capacity. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(d) * * *

(2) If you must meet the HAP metal emission limitations in § 63.1564, you elect the option in paragraph (a)(1)(iv) in § 63.1564 (Ni per coke burn-off), and you use continuous parameter monitoring systems, you must establish an operating limit for the equilibrium catalyst Ni concentration based on the laboratory analysis of the equilibrium catalyst Ni concentration from the initial performance test. * * *

* * * * *

(4) Except as specified in paragraph (d)(3) of this section, if you use continuous parameter monitoring systems, you may adjust one of your monitored operating parameters (flow rate, total power and secondary current, pressure drop, liquid-to-gas ratio) from the average of measured values during

the performance test to the maximum value (or minimum value, if applicable) representative of worst-case operating conditions, if necessary. This adjustment of measured values may be done using control device design specifications, manufacturer recommendations, or other applicable information. You must provide supporting documentation and rationale in your Notification of Compliance Status, demonstrating to the satisfaction of your permitting authority, that your affected source complies with the applicable emission limit at the operating limit based on adjusted values.

* * * * *

■ 46. Section 63.1572 is amended by revising paragraphs (c) introductory text, (c)(1), (3), and (4) and (d)(1) and (2) to read as follows:

§ 63.1572 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(c) Except for flare monitoring systems, you must install, operate, and maintain each continuous parameter monitoring system according to the requirements in paragraphs (c)(1) through (5) of this section. For flares, on and after January 30, 2019, you must install, operate, calibrate, and maintain monitoring systems as specified in §§ 63.670 and 63.671. Prior to January 30, 2019, you must either meet the monitoring system requirements in paragraphs (c)(1) through (5) of this section or meet the requirements in §§ 63.670 and 63.671.

(1) You must install, operate, and maintain each continuous parameter monitoring system according to the requirements in Table 41 of this subpart. You must also meet the equipment specifications in Table 41 of this subpart if pH strips or colorimetric tube sampling systems are used. You must install, operate, and maintain each continuous parameter monitoring system according to the requirements in Table 41 of this subpart. You must meet the requirements in Table 41 of this subpart for BLD systems. Alternatively, before August 1, 2017, you may install, operate, and maintain each continuous parameter monitoring system in a manner consistent with the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately.

* * * * *

(3) Each continuous parameter monitoring system must have valid hourly average data from at least 75

percent of the hours during which the process operated, except for BLD systems.

(4) Each continuous parameter monitoring system must determine and record the hourly average of all recorded readings and if applicable, the daily average of all recorded readings for each operating day, except for BLD systems. The daily average must cover a 24-hour period if operation is continuous or the number of hours of operation per day if operation is not continuous, except for BLD systems.

* * * * *

(d) * * *

(1) You must conduct all monitoring in continuous operation (or collect data at all required intervals) at all times the affected source is operating.

(2) You may not use data recorded during required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments) for purposes of this regulation, including data averages and calculations, for fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

■ 47. Section 63.1573 is amended by:

■ a. Redesignating paragraphs (b), (c), (d), (e), and (f) as paragraphs (c), (d), (e), (f), and (g);

■ b. Adding paragraph (b); and

■ c. Revising newly redesignated paragraphs (c) introductory text, (d) introductory text, (f) introductory text, and (g)(1) introductory text.

The revisions and additions read as follows:

§ 63.1573 What are my monitoring alternatives?

* * * * *

(b) *What is the approved alternative for monitoring pressure drop?* You may use this alternative to a continuous parameter monitoring system for pressure drop if you operate a jet ejector type wet scrubber or other type of wet scrubber equipped with atomizing spray nozzles. You shall:

(1) Conduct a daily check of the air or water pressure to the spray nozzles;

(2) Maintain records of the results of each daily check; and

(3) Repair or replace faulty (e.g., leaking or plugged) air or water lines within 12 hours of identification of an abnormal pressure reading.

(c) *What is the approved alternative for monitoring pH or alkalinity levels?* You may use the alternative in

paragraph (c)(1) or (2) of this section for a catalytic reforming unit.

* * * * *

(d) *Can I use another type of monitoring system?* You may use an automated data compression system. An automated data compression system does not record monitored operating parameter values at a set frequency (*e.g.*, once every hour) but records all values that meet set criteria for variation from previously recorded values. You must maintain a record of the description of the monitoring system and data recording system, including the criteria used to determine which monitored values are recorded and retained, the method for calculating daily averages, and a demonstration that the system meets all of the criteria in paragraphs (d)(1) through (5) of this section:

* * * * *

(f) *How do I request to monitor alternative parameters?* You must submit a request for review and approval or disapproval to the Administrator. The request must include the information in paragraphs (f)(1) through (5) of this section.

* * * * *

(g) * * *
(1) You may request alternative monitoring requirements according to the procedures in this paragraph if you meet each of the conditions in paragraphs (g)(1)(i) through (iii) of this section:

* * * * *

■ 48. Section 63.1574 is amended by revising paragraphs (a)(3) introductory text and (f)(1) to read as follows:

§ 63.1574 What notifications must I submit and when?

(a) * * *

(3) If you are required to conduct an initial performance test, performance evaluation, design evaluation, opacity observation, visible emission observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii). You can submit this information in an operating permit application, in an amendment to an operating permit application, in a separate submission, or in any combination. In a State with an approved operating permit program where delegation of authority under section 112(l) of the CAA has not been requested or approved, you must provide a duplicate notification to the applicable Regional Administrator. If the required information has been submitted previously, you do not have to provide a separate notification of compliance status. Just refer to the

earlier submissions instead of duplicating and resubmitting the previously submitted information.

* * * * *

(f) * * *

(1) You must submit the plan to your permitting authority for review and approval along with your notification of compliance status. While you do not have to include the entire plan in your permit under part 70 or 71 of this chapter, you must include the duty to prepare and implement the plan as an applicable requirement in your part 70 or 71 operating permit. You must submit any changes to your permitting authority for review and approval and comply with the plan as submitted until the change is approved.

* * * * *

■ 49. Section 63.1575 is amended by:

- a. Revising paragraphs (d) introductory text and (d)(1) and (2);
- b. Adding paragraph (d)(4);
- c. Revising paragraph (e) introductory text;
- d. Removing and reserving paragraph (e)(1);
- e. Revising paragraphs (e)(4) and (6) and (f)(1) and (2);
- f. Removing and reserving paragraph (h); and
- g. Adding paragraph (k).

The revisions and additions read as follows:

§ 63.1575 What reports must I submit and when?

* * * * *

(d) For each deviation from an emission limitation and for each deviation from the requirements for work practice standards that occurs at an affected source where you are not using a continuous opacity monitoring system or a continuous emission monitoring system to comply with the emission limitation or work practice standard in this subpart, the semiannual compliance report must contain the information in paragraphs (c)(1) through (3) of this section and the information in paragraphs (d)(1) through (4) of this section.

(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).

* * * * *

(4) 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 occurring at an affected source where you are using a continuous opacity monitoring system or a continuous emission monitoring system to comply with the emission limitation, you must include the information in paragraphs (c)(1) through (3) of this section, in paragraphs (d)(1) through (3) of this section, and in paragraphs (e)(2) through (13) of this section.

* * * * *

(4) 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 breakdown of the total duration of the deviations during the reporting period and into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(f) * * *

(1) You must include the information in paragraph (f)(1)(i) or (ii) of this section, if applicable.

(i) If you are complying with paragraph (k)(1) of this section, a summary of the results of any performance test done during the reporting period on any affected unit. Results of the performance test include the identification of the source tested, the date of the test, the percentage of emissions reduction or outlet pollutant concentration reduction (whichever is needed to determine compliance) for each run and for the average of all runs, and the values of the monitored operating parameters.

(ii) If you are not complying with paragraph (k)(1) of this section, a copy of any performance test done during the reporting period on any affected unit. The report may be included in the next semiannual compliance report. The copy must include a complete report for each test method used for a particular kind of emission point tested. For additional tests performed for a similar emission point using the same method, you must submit the results and any other information required, but a complete test report is not required. A complete test report contains a brief process description; a simplified flow diagram showing affected processes, control equipment, and sampling point locations; sampling site data; description of sampling and analysis procedures and any modifications to standard procedures; quality assurance procedures; record of operating conditions during the test; record of

preparation of standards; record of calibrations; raw data sheets for field sampling; raw data sheets for field and laboratory analyses; documentation of calculations; and any other information required by the test method.

(2) Any requested change in the applicability of an emission standard (e.g., you want to change from the PM standard to the Ni standard for catalytic cracking units or from the HCl concentration standard to percent reduction for catalytic reforming units) in your compliance report. You must include all information and data necessary to demonstrate compliance with the new emission standard selected and any other associated requirements.

* * * * *

(k) *Electronic submittal of performance test and CEMS performance evaluation data.* For performance tests or CEMS performance evaluations conducted on and after February 1, 2016, if required to submit the results of a performance test or CEMS performance evaluation, you must submit the results according to the procedures in paragraphs (k)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test as required by this subpart, you must submit the results of the performance tests following the procedure specified in either paragraph (k)(1)(i) or (ii) of this section.

(i) 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) (<https://cdx.epa.gov/>)). Performance test data must be submitted in a file format generated through use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site. 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, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage

media to the EPA. The electronic storage media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (k)(1)(i).

(ii) 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.

(2) Within 60 days after the date of completing each CEMS performance evaluation required by § 63.1571(a) and (b), you must submit the results of the performance evaluation following the procedure specified in either paragraph (k)(2)(i) or (ii) of this section.

(i) For performance evaluations of continuous monitoring systems measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the EPA via the CEDRI. (CEDRI is accessed through the EPA's CDX.) Performance evaluation data must be submitted in a file format generated through the use of the EPA's ERT or an alternate file format consistent with the XML schema listed on the EPA's ERT Web site. If you claim that some of the performance evaluation information being submitted is 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, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic storage media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (k)(2)(i).

(ii) For any performance evaluations of continuous monitoring systems measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the Administrator at the appropriate address listed in § 63.13.

■ 50. Section 63.1576 is amended by revising paragraphs (a)(2) and (b)(3) and (5) to read as follows:

§ 63.1576 What records must I keep, in what form, and for how long?

(a) * * *

(2) The records specified in paragraphs (a)(2)(i) through (iv) of this section.

(i) Record the date, time, and duration of each startup and/or shutdown period, recording the periods when the affected source was subject to the standard applicable to startup and shutdown.

(ii) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time and duration of each failure.

(iii) For each failure to meet an applicable standard, 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.

(iv) Record actions taken to minimize emissions in accordance with § 63.1570(c) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(b) * * *

(3) The performance evaluation plan as described in § 63.8(d)(2) for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you must keep previous (*i.e.*, superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

* * * * *

(5) Records of the date and time that each deviation started and stopped.

* * * * *

■ 51. Section 63.1579 is amended by:

- a. Revising the introductory text;
- b. Adding, in alphabetical order, a new definition of "Hot standby"; and
- c. Revising the definitions of "Deviation" and "PM".

The revisions read as follows:

§ 63.1579 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in 40 CFR 63.2, the General Provisions of

this part (§§ 63.1 through 63.15), and in this section as listed. If the same term is defined in subpart A of this part and in this section, it shall have the meaning given in this section for purposes of this subpart.

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limit, 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 and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

Hot standby means periods when the catalytic cracking unit is not receiving fresh or recycled feed oil but the catalytic cracking unit is maintained at elevated temperatures, typically using torch oil in the catalyst regenerator and recirculating catalyst, to prevent a complete shutdown and cold restart of the catalytic cracking unit.

* * * * *

PM means, for the purposes of this subpart, emissions of particulate matter

that serve as a surrogate measure of the total emissions of particulate matter and metal HAP contained in the particulate matter, including but not limited to: Antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium as measured by Methods 5, 5B or 5F in appendix A–3 to part 60 of this chapter or by an approved alternative method.

* * * * *

■ 52. Table 1 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1564(a)(1), you shall meet each emission limitation in the following table that applies to you.

TABLE 1 TO SUBPART UUU OF PART 63—METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

For each new or existing catalytic cracking unit . . .	You shall meet the following emission limits for each catalyst regenerator vent . . .
1. Subject to new source performance standard (NSPS) for PM in 40 CFR 60.102 and not electing § 60.100(e).	PM emissions must not exceed 1.0 gram per kilogram (g/kg) (1.0 lb/1,000 lb) of coke burn-off, and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period. Before August 1, 2017, if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or in supplemental liquid or solid fossil fuel, the incremental rate of PM emissions must not exceed 43.0 grams per Gigajoule (g/GJ) or 0.10 pounds per million British thermal units (lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.
2. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i); or 40 CFR 60.102 and electing § 60.100(e).	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off or, if a PM CEMS is used, 0.040 grain per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air.
3. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(ii)	PM emissions must not exceed 0.5 g/kg coke burn-off (0.5 lb/1000 lb coke burn-off) or, if a PM CEMS is used, 0.020 gr/dscf corrected to 0 percent excess air.
4. Option 1a: Elect NSPS subpart J requirements for PM per coke burn limit and 30% opacity, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed the limits specified in Item 1 of this table.
5. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1000 lb) of coke burn-off.
6. Option 1c: Elect NSPS subpart Ja requirements for PM concentration limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 0.040 gr/dscf corrected to 0 percent excess air.
7. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1000 lb) of coke burn-off in the catalyst regenerator.
8. Option 3: Ni lb/hr limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Nickel (Ni) emissions must not exceed 13,000 milligrams per hour (mg/hr) (0.029 lb/hr).
9. Option 4: Ni per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Ni emissions must not exceed 1.0 mg/kg (0.001 lb/1,000 lb) of coke burn-off in the catalyst regenerator.

■ 53. Table 2 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1564(a)(2), you shall meet each operating limit in the following table that applies to you.

TABLE 2 TO SUBPART UUU OF PART 63—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

For each new or existing catalytic cracking unit . . .	For this type of continuous monitoring system . . .	For this type of control device . . .	You shall meet this operating limit . . .
1. Subject to the NSPS for PM in 40 CFR 60.102 and not electing § 60.100(e).	Continuous opacity monitoring system.	Any	Maintain the 3-hour rolling average opacity of emissions from your catalyst regenerator vent no higher than 20 percent.

TABLE 2 TO SUBPART UUU OF PART 63—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	For this type of continuous monitoring system . . .	For this type of control device . . .	You shall meet this operating limit . . .
2. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i) or electing § 60.100(e).	a. PM CEMS b. Continuous opacity monitoring system used to comply with a site-specific opacity limit. c. Continuous parameter monitoring systems. d. Continuous parameter monitoring systems. e. Bag leak detection (BLD) system.	Any Cyclone or electrostatic precipitator. Electrostatic precipitator Wet scrubber Fabric filter	Not applicable. Maintain the 3-hour rolling average opacity of emissions from your catalyst regenerator vent no higher than the site-specific opacity limit established during the performance test. i. Maintain the daily average coke burn-off rate or daily average flow rate no higher than the limit established in the performance test. ii. Maintain the 3-hour rolling average total power and secondary current above the limit established in the performance test. i. Maintain the 3-hour rolling average liquid-to-gas ratio above the limit established in the performance test. ii. Except for periods of startup, shutdown, and hot standby, maintain the 3-hour rolling average pressure drop above the limit established in the performance test.¹ Maintain particulate loading below the BLD alarm set point established in the initial adjustment of the BLD system or allowable seasonal adjustments.
3. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(ii).	Any	Any	The applicable operating limits in Item 2 of this table.
4. Option 1a: Elect NSPS subpart J requirements for PM per coke burn limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Any	Any	See Item 1 of this table.
5. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Any	Any	The applicable operating limits in Item 2.b, 2.c, 2.d, and 2.e of this table.
6. Option 1c: Elect NSPS subpart Ja requirements for PM concentration limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM CEMS	Any	Not applicable.
7. Option 2: PM per coke burn-off limit not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Continuous opacity monitoring system used to comply with a site-specific opacity limit. b. Continuous parameter monitoring systems.	Cyclone, fabric filter, or electrostatic precipitator. i. Electrostatic precipitator	See Item 2.b of this table. Alternatively, before August 1, 2017, you may maintain the hourly average opacity of emissions from your catalyst generator vent no higher than the site-specific opacity limit established during the performance test. (1) See Item 2.c.i of this table. (2) See item 2.c.ii of this table. Alternatively, before August 1, 2017, you may maintain the daily average voltage and secondary current above the limit established in the performance test.

TABLE 2 TO SUBPART UUU OF PART 63—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	For this type of continuous monitoring system . . .	For this type of control device . . .	You shall meet this operating limit . . .
8. Option 3: Ni lb/hr limit not subject to the NSPS for PM in 40 CFR 60.102.	c. Bag leak detection (BLD) system.	ii. Wet scrubber	(1) See Item 2.d.i of this table. Alternatively, before August 1, 2017, you may maintain the daily average liquid-to-gas ratio above the limit established in the performance test. (2) See Item 2.d.ii of the table. Alternatively, before August 1, 2017, you may maintain the daily average pressure drop above the limit established in the performance test (not applicable to a wet scrubber of the non-venturi jet-ejector design). See item 2.e of this table.
		Fabric filter	Maintain the 3-hour rolling average Ni operating value no higher than the limit established during the performance test. Alternatively, before August 1, 2017, you may maintain the daily average Ni operating value no higher than the limit established during the performance test.
	a. Continuous opacity monitoring system.	Cyclone, fabric filter, or electrostatic precipitator.	(1) See Item 2.c.i of this table. (2) Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test. (3) See Item 2.c.ii of this table. Alternatively, before August 1, 2017, you may maintain the daily average voltage and secondary current (or total power input) above the established during the performance test.
	b. Continuous parameter monitoring systems.	i. Electrostatic precipitator	(1) Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test. (2) See Item 2.d.i of this table. Alternatively, before August 1, 2017, you may maintain the daily average liquid-to-gas ratio above the limit established during the performance test. (3) See Item 2.d.ii of this table. Alternatively, before August 1, 2017, you may maintain the daily average pressure drop above the limit established during the performance test (not applicable to a non-venturi wet scrubber of the jet-ejector design). See item 2.e of this table.
		ii. Wet scrubber	
	c. Bag leak detection (BLD) system.	Fabric filter	See item 2.e of this table.

TABLE 2 TO SUBPART UUU OF PART 63—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	For this type of continuous monitoring system . . .	For this type of control device . . .	You shall meet this operating limit . . .
9. Option 4: Ni per coke burn-off limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	Cyclone, fabric filter, or electrostatic precipitator.	Maintain the 3-hour rolling average Ni operating value no higher than Ni operating limit established during the performance test. Alternatively, before August 1, 2017, you may elect to maintain the daily average Ni operating value no higher than the Ni operating limit established during the performance test.
	b. Continuous parameter monitoring systems.	i. Electrostatic precipitator	(1) Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test. (2) See Item 2.c.ii of this table. Alternatively, before August 1, 2017, you may maintain the daily average voltage and secondary current (or total power input) above the limit established during the performance test.
		ii. Wet scrubber	(1) Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test. (2) See Item 2.d.i of this table. Alternatively, before August 1, 2017, you may maintain the daily average liquid-to-gas ratio above the limit established during the performance test. (3) See Item 2.d.ii of this table. Alternatively, before August 1, 2017, you may maintain the daily average pressure drop above the limit established during the performance test (not applicable to a non-venturi wet scrubber of the jet-ejector design).
	c. Bag leak detection (BLD) system.	Fabric filter	See item 2.e of this table.
10. During periods of startup, shutdown, or hot standby.	Any	Any	Meet the requirements in § 63.1564(a)(5).

¹ If you use a jet ejector type wet scrubber or other type of wet scrubber equipped with atomizing spray nozzles, you can use the alternative in § 63.1573(b), and comply with the daily inspections, recordkeeping, and repair provisions, instead of a continuous parameter monitoring system for pressure drop across the scrubber.

■ 54. Table 3 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1564(b)(1), you shall meet each requirement in the following table that applies to you.

TABLE 3 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

For each new or existing catalytic cracking unit . . .	If you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
1. Subject to the NSPS for PM in 40 CFR 60.102 and not electing § 60.100(e).	Any	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.

TABLE 3 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	If you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
2. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i); or in § 60.102 and electing § 60.100(e); electing to meet the PM per coke burn-off limit.	a. Cyclone b. Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent. Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the coke burn-off rate or the gas flow rate entering or exiting the control device, ¹ the voltage, current, and secondary current to the control device.
	c. Wet scrubber	Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, ² the coke burn-off rate or the gas flow rate entering or exiting the control device, ³ and total liquid (or scrubbing liquor) flow rate to the control device.
	d. Fabric Filter	Continuous bag leak detection system to measure and record increases in relative particulate loading from each catalyst regenerator vent.
3. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i); or in § 60.102 and electing § 60.100(e); electing to meet the PM concentration limit.	Any	Continuous emission monitoring system to measure and record the concentration of PM and oxygen from each catalyst regenerator vent.
4. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(ii) electing to meet the PM per coke burn-off limit.	Any	The applicable continuous monitoring systems in item 2 of this table.
5. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(ii) electing to meet the PM concentration limit.	Any	See item 3 of this table.
6. Option 1a: Elect NSPS subpart J, PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.120a(b)(1).	Any	See item 1 of this table.
7. Option 1b: Elect NSPS subpart Ja, PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.120a(b)(1).	Any	The applicable continuous monitoring systems in item 2 of this table.
8. Option 1c: Elect NSPS subpart Ja, PM concentration limit not subject to the NSPS for PM in 40 CFR 60.102 or 60.120a(b)(1).	Any	See item 3 of this table.
9. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.120a(b)(1).	Any	The applicable continuous monitoring systems in item 2 of this table.
10. Option 3: Ni lb/hr limit not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Cyclone b. Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device. ¹
		Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device ¹ ; or continuous parameter monitoring systems to measure and record the coke burn-off rate or the gas flow rate entering or exiting the control device ¹ and the voltage and current (to measure the total power to the system) and secondary current to the control device.
	c. Wet scrubber	Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, ² gas flow rate entering or exiting the control device, ¹ and total liquid (or scrubbing liquor) flow rate to the control device.
	d. Fabric Filter	Continuous bag leak detection system to measure and record increases in relative particulate loading from each catalyst regenerator vent or the monitoring systems specified in item 10.a of this table.
11. Option 4: Ni per coke burn-off limit not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Cyclone	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the coke burn-off rate and the gas flow rate entering or exiting the control device. ¹

TABLE 3 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	If you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
	b. Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the coke burn-off rate and the gas flow rate entering or exiting the control device ¹ ; or continuous parameter monitoring systems to measure and record the coke burn-off rate or the gas flow rate entering or exiting the control device ¹ and voltage and current (to measure the total power to the system) and secondary current to the control device.
	c. Wet scrubber	Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, ² gas flow rate entering or exiting the control device, ¹ and total liquid (or scrubbing liquor) flow rate to the control device.
	d. Fabric Filter	Continuous bag leak detection system to measure and record increases in relative particulate loading from each catalyst regenerator vent or the monitoring systems specified in item 11.a of this table.
12. Electing to comply with the operating limits in § 63.1566(a)(5)(iii) during periods of startup, shutdown, or hot standby.	Any	Continuous parameter monitoring system to measure and record the gas flow rate exiting the catalyst regenerator. ¹

¹ If applicable, you can use the alternative in § 63.1573(a)(1) instead of a continuous parameter monitoring system for gas flow rate.

² If you use a jet ejector type wet scrubber or other type of wet scrubber equipped with atomizing spray nozzles, you can use the alternative in § 63.1573(b) instead of a continuous parameter monitoring system for pressure drop across the scrubber.

■ 55. Table 4 to subpart UUU of part 63 is revised to read as follows: As stated in §§ 63.1564(b)(2) and 63.1571(a)(5), you shall meet each requirement in the following table that applies to you.

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
1. Any	a. Select sampling port's location and the number of traverse ports. b. Determine velocity and volumetric flow rate. c. Conduct gas molecular weight analysis. d. Measure moisture content of the stack gas. e. If you use an electrostatic precipitator, record the total number of fields in the control system and how many operated during the applicable performance test. f. If you use a wet scrubber, record the total amount (rate) of water (or scrubbing liquid) and the amount (rate) of make-up liquid to the scrubber during each test run.	Method 1 or 1A in appendix A–1 to part 60 of this chapter. Method 2, 2A, 2C, 2D, or 2F in appendix A–1 to part 60 of this chapter, or Method 2G in appendix A–2 to part 60 of this chapter, as applicable. Method 3, 3A, or 3B in appendix A–2 to part 60 of this chapter, as applicable. Method 4 in appendix A–3 to part 60 of this chapter.	Sampling sites must be located at the outlet of the control device or the outlet of the regenerator, as applicable, and prior to any releases to the atmosphere.

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
2. Subject to the NSPS for PM in 40 CFR 60.102 and not elect § 60.100(e).	a. Measure PM emissions b. Compute coke burn-off rate and PM emission rate (lb/1,000 lb of coke burn-off). c. Measure opacity of emissions ..	Method 5, 5B, or 5F (40 CFR part 60, appendix A-3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A-3) to determine PM emissions and associated moisture content for unit with wet scrubber. Equations 1, 2, and 3 of § 63.1564 (if applicable). Continuous opacity monitoring system.	You must maintain a sampling rate of at least 0.15 dry standard cubic meters per minute (dscm/min) (0.53 dry standard cubic feet per minute (dscf/min)). You must collect opacity monitoring data every 10 seconds during the entire period of the Method 5, 5B, or 5F performance test and reduce the data to 6-minute averages.
3. Subject to the NSPS for PM in 40 CFR 60.102a(b)(1) or elect § 60.100(e), electing the PM for coke burn-off limit.	a. Measure PM emissions b. Compute coke burn-off rate and PM emission rate (lb/1,000 lb of coke burn-off). c. Establish site-specific limit if you use a COMS.	Method 5, 5B, or 5F (40 CFR part 60, appendix A-3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A-3) to determine PM emissions and associated moisture content for unit with wet scrubber. Equations 1, 2, and 3 of § 63.1564 (if applicable). Continuous opacity monitoring system.	You must maintain a sampling rate of at least 0.15 dscm/min (0.53 dscf/min). If you elect to comply with the site-specific opacity limit in § 63.1564(b)(4)(i), you must collect opacity monitoring data every 10 seconds during the entire period of the Method 5, 5B, or 5F performance test. For site specific opacity monitoring, reduce the data to 6-minute averages; determine and record the average opacity for each test run; and compute the site-specific opacity limit using Equation 4 of § 63.1564.
4. Subject to the NSPS for PM in 40 CFR 60.102a(b)(1) or elect § 60.100(e).	a. Measure PM emissions	Method 5, 5B, or 5F (40 CFR part 60, appendix A-3) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5 or 5B (40 CFR part 60, appendix A-3) to determine PM emissions and associated moisture content for unit with wet scrubber.	You must maintain a sampling rate of at least 0.15 dscm/min (0.53 dscf/min).
5. Option 1a: Elect NSPS subpart J requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 2 of this table.	.....	
6. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 3 of this table.		

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
7. Option 1c: Elect NSPS requirements for PM concentration, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 4 of this table.		
8. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 3 of this table.		
9. Option 3: Ni lb/hr limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Measure concentration of Ni b. Compute Ni emission rate (lb/hr). c. Determine the equilibrium catalyst Ni concentration. d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	Method 29 (40 CFR part 60, appendix A–8). Equation 5 of § 63.1564. XRF procedure in appendix A to this subpart1; or EPA Method 6010B or 6020 or EPA Method 7520 or 7521 in SW–8462; or an alternative to the SW–846 method satisfactory to the Administrator. i. Equations 6 and 7 of § 63.1564 using data from continuous opacity monitoring system, gas flow rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	You must obtain 1 sample for each of the 3 test runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571. (1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the average opacity from all the 6-minute averages for each test run. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate for each test run.
10. Option 4: Ni per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Measure concentration of Ni. b. Compute Ni emission rate (lb/1,000 lb of coke burn-off). c. Determine the equilibrium catalyst Ni concentration. d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	Method 29 (40 CFR part 60, appendix A–8). Equations 1 and 8 of § 63.1564. See item 6.c. of this table i. Equations 9 and 10 of § 63.1564 with data from continuous opacity monitoring system, coke burn-off rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	You must obtain 1 sample for each of the 3 test runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571. (1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the average opacity from all the 6-minute averages for each test run.

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
11. If you elect item 5 Option 1b in Table 1, item 7 Option 2 in Table 1, item 8 Option 3 in Table 1, or item 9 Option 4 in Table 1 of this subpart and you use continuous parameter monitoring systems.	e. Record the catalyst addition rate for each test and schedule for the 10-day period prior to the test.		(2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow rate as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate for each test run.
	a. Establish each operating limit in Table 2 of this subpart that applies to you.	Data from the continuous parameter monitoring systems and applicable performance test methods.	
	b. Electrostatic precipitator or wet scrubber: Gas flow rate.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial performance test; determine and record the average gas flow rate for each test run. (2) You must determine and record the 3-hr average gas flow rate from the test runs. Alternatively, before August 1, 2017, you may determine and record the maximum hourly average gas flow rate from all the readings.
	c. Electrostatic precipitator: Total power (voltage and current) and secondary current.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect voltage, current, and secondary current monitoring data every 15 minutes during the entire period of the performance test; and determine and record the average voltage, current, and secondary current for each test run. Alternatively, before August 1, 2017, you may collect voltage and secondary current (or total power input) monitoring data every 15 minutes during the entire period of the initial performance test. (2) You must determine and record the 3-hr average total power to the system for the test runs and the 3-hr average secondary current from the test runs. Alternatively, before August 1, 2017, you may determine and record the minimum hourly average voltage and secondary current (or total power input) from all the readings.

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .
	d. Electrostatic precipitator or wet scrubber: Equilibrium catalyst Ni concentration.	Results of analysis for equilibrium catalyst Ni concentration.	You must determine and record the average equilibrium catalyst Ni concentration for the 3 runs based on the laboratory results. You may adjust the value using Equation 1 or 2 of § 63.1571 as applicable.
	e. Wet scrubber: Pressure drop (not applicable to non-venturi scrubber of jet ejector design).	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect pressure drop monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the average pressure drop for each test run. (2) You must determine and record the 3-hr average pressure drop from the test runs. Alternatively, before August 1, 2017, you may determine and record the minimum hourly average pressure drop from all the readings.
	f. Wet scrubber: Liquid-to-gas ratio.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect gas flow rate and total water (or scrubbing liquid) flow rate monitoring data every 15 minutes during the entire period of the initial performance test; determine and record the average gas flow rate for each test run; and determine the average total water (or scrubbing liquid) flow for each test run. (2) You must determine and record the hourly average liquid-to-gas ratio from the test runs. Alternatively, before August 1, 2017, you may determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate from all the readings. (3) You must determine and record the 3-hr average liquid-to-gas ratio. Alternatively, before August 1, 2017, you may determine and record the minimum liquid-to-gas ratio.
	g. Alternative procedure for gas flow rate.	i. Data from the continuous parameter monitoring systems and applicable performance test methods.	(1) You must collect air flow rate monitoring data or determine the air flow rate using control room instrumentation every 15 minutes during the entire period of the initial performance test. (2) You must determine and record the 3-hr average rate of all the readings from the test runs. Alternatively, before August 1, 2017, you may determine and record the hourly average rate of all the readings. (3) You must determine and record the maximum gas flow rate using Equation 1 of § 63.1573.

¹ Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure).

²EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, and EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Revision 5 (April 1998). The SW-846 and Updates (document number 955-001-00000-1) are available for purchase from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, (202) 512-1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. Copies may be inspected at the EPA Docket Center, William Jefferson Clinton (WJC) West Building, (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

■ 56. Table 5 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1564(b)(5), you shall meet each requirement in the following table that applies to you.

TABLE 5 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

For each new and existing catalytic cracking unit catalyst regenerator vent . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Subject to the NSPS for PM in 40 CFR 60.102 and not electing § 60.100(e).	PM emissions must not exceed 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off, and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period. Before August 1, 2017, if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ or 0.10 lb/million Btu of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM emission rate is less than or equal to 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance test to demonstrate initial compliance with the NSPS and the average hourly opacity is no more than 30 percent, except that one 6-minute average in any 1-hour period can exceed 30 percent. As part of the Notification of Compliance Status, you must certify that your vent meets the 30 percent opacity limit. As part of your Notification of Compliance Status, you certify that your continuous opacity monitoring system meets the requirements in § 63.1572.
2. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i); or in § 60.102 and electing § 60.100(e); electing to meet the PM per coke burn-off limit.	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM emission rate is less than or equal to 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. As part of your Notification of Compliance Status, you certify that your BLD; CO ₂ , O ₂ , or CO monitor; or continuous opacity monitoring system meets the requirements in § 63.1572.
3. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i), electing to meet the PM per coke burn-off limit.	PM emissions must not exceed 0.5 g/kg (0.5 lb PM/1,000 lb) of coke burn-off.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM emission rate is less than or equal to 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. As part of your Notification of Compliance Status, you certify that your BLD; CO ₂ , O ₂ , or CO monitor; or continuous opacity monitoring system meets the requirements in § 63.1572.
4. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i), electing to meet the PM concentration limit.	If a PM CEMS is used, 0.040 grain per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM concentration is less than or equal to 0.040 grain per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. As part of your Notification of Compliance Status, you certify that your PM CEMS meets the requirements in § 63.1572.

TABLE 5 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

For each new and existing catalytic cracking unit catalyst regenerator vent . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
5. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(ii), electing to meet the PM concentration limit.	If a PM CEMS is used, 0.020 gr/dscf corrected to 0 percent excess air.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM concentration is less than or equal to 0.020 gr/dscf corrected to 0 percent excess air. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. As part of your Notification of Compliance Status, you certify that your PM CEMS meets the requirements in § 63.1572.
6. Option 1a: Elect NSPS subpart J requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 1.0 gram per kilogram (g/kg) (1.0 lb/1,000 lb) of coke burn-off, and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period. Before August 1, 2017, PM emission must not exceed 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	The average PM emission rate, measured using EPA Method 5, 5B, or 5F (for a unit without a wet scrubber) or 5 or 5B (for a unit with a wet scrubber) (40 CFR part 60, appendix A–3), over the period of the initial performance test, is no higher than 1.0 g/kg coke burn-off (1.0 lb/1,000 lb) in the catalyst regenerator. The PM emission rate is calculated using Equations 1, 2, and 3 of § 63.1564. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. The average hourly opacity is no more than 30 percent, except that one 6-minute average in any 1-hour period can exceed 30 percent. As part of the Notification of Compliance Status, you must certify that your vent meets the 30 percent opacity limit. If you use a continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.
7. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off.	The average PM emission rate, measured using EPA Method 5, 5B, or 5F (for a unit without a wet scrubber) or 5 or 5B (for a unit with a wet scrubber) (40 CFR part 60, appendix A–3), over the period of the initial performance test, is no higher than 1.0 g/kg coke burn-off (1.0 lb/1,000 lb) in the catalyst regenerator. The PM emission rate is calculated using Equations 1, 2, and 3 of § 63.1564. If you use a BLD; CO ₂ , O ₂ , CO monitor; or continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.
8. Option 1c: Elect NSPS subpart Ja requirements for PM concentration limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 0.040 gr/dscf corrected to 0 percent excess air.	The average PM concentration, measured using EPA Method 5, 5B, or 5F (for a unit without a wet scrubber) or Method 5 or 5B (for a unit with a wet scrubber) (40 CFR part 60, appendix A–3), over the period of the initial performance test, is less than or equal to 0.040 gr/dscf corrected to 0 percent excess air. Your performance evaluation shows your PM CEMS meets the applicable requirements in § 63.1572.
9. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off.	The average PM emission rate, measured using EPA Method 5, 5B, or 5F (for a unit without a wet scrubber) or 5 or 5B (for a unit with a wet scrubber) (40 CFR part 60, appendix A–3), over the period of the initial performance test, is no higher than 1.0 g/kg coke burn-off (1.0 lb/1,000 lb) in the catalyst regenerator. The PM emission rate is calculated using Equations 1, 2, and 3 of § 63.1564. If you use a BLD; CO ₂ , O ₂ , CO monitor; or continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.
10. Option 3: Ni lb/hr limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Nickel (Ni) emissions from your catalyst regenerator vent must not exceed 13,000 mg/hr (0.029 lb/hr).	The average Ni emission rate, measured using Method 29 (40 CFR part 60, appendix A–8) over the period of the initial performance test, is not more than 13,000 mg/hr (0.029 lb/hr). The Ni emission rate is calculated using Equation 5 of § 63.1564; and if you use a BLD; CO ₂ , O ₂ , or CO monitor; or continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.

TABLE 5 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

For each new and existing catalytic cracking unit catalyst regenerator vent . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
11. Option 4: Ni per coke burn-off limit not subject to the NSPS for PM.	Ni emissions from your catalyst regenerator vent must not exceed 1.0 mg/kg (0.001 lb/1,000 lb) of coke burn-off in the catalyst regenerator.	The average Ni emission rate, measured using Method 29 (40 CFR part 60, appendix A–8) over the period of the initial performance test, is not more than 1.0 mg/kg (0.001 lb/1,000 lb) of coke burn-off in the catalyst regenerator. The Ni emission rate is calculated using Equation 8 of § 63.1564; and if you use a BLD; CO ₂ , O ₂ , or CO monitor; or continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.

■ 57. Table 6 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1564(c)(1), you shall meet each requirement in the following table that applies to you.

TABLE 6 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

For each new and existing catalytic cracking unit . . .	Subject to this emission limit for your catalyst regenerator vent . . .	You shall demonstrate continuous compliance by . . .
1. Subject to the NSPS for PM in 40 CFR 60.102 and not electing § 60.100(e).	a. PM emissions must not exceed 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off, and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period. Before August 1, 2017, if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	i. Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) using Equation 1 in § 63.1564 and the hours of operation for each catalyst regenerator.
2. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i), electing to meet the PM per coke burn-off limit.	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off.	ii. Conducting a performance test before August 1, 2017 and thereafter following the testing frequency in § 63.1571(a)(5) as applicable to your unit. iii. Collecting the continuous opacity monitoring data for each catalyst regenerator vent according to § 63.1572 and maintaining each 6-minute average at or below 30 percent, except that one 6-minute average during a 1-hour period can exceed 30 percent.
3. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(ii), electing to meet the PM per coke burn-off limit.	PM emissions must not exceed 0.5 g/kg coke burn-off (0.5 lb/1000 lb coke burn-off).	iv. Before August 1, 2017, if applicable, determining and recording each day the rate of combustion of liquid or solid fossil fuels (liters/hour or kilograms/hour) and the hours of operation during which liquid or solid fossil-fuels are combusted in the incinerator-waste heat boiler; if applicable, maintaining the incremental rate of PM at or below 43 g/GJ (0.10 lb/million Btu) of heat input attributable to the solid or liquid fossil fuel. Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) using Equation 1 in § 63.1564 and the hours of operation for each catalyst regenerator; maintaining PM emission rate below 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off; and conducting a performance test once every year. Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) using Equation 1 in § 63.1564 and the hours of operation for each catalyst regenerator; maintaining PM emission rate below 0.5 g/kg (0.5 lb/1,000 lb) of coke burn-off; and conducting a performance test once every year.

TABLE 6 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

For each new and existing catalytic cracking unit . . .	Subject to this emission limit for your catalyst regenerator vent . . .	You shall demonstrate continuous compliance by . . .
4. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i), electing to meet the PM concentration limit.	If a PM CEMS is used, 0.040 grain per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air.	Maintaining PM concentration below 0.040 gr/dscf corrected to 0 percent excess air.
5. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(ii), electing to meet the PM concentration limit.	If a PM CEMS is used, 0.020 gr/dscf corrected to 0 percent excess air.	Maintaining PM concentration below 0.020 gr/dscf corrected to 0 percent excess air.
6. Option 1a: Elect NSPS subpart J requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	See item 1 of this table	See item 1 of this table.
7. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit and 30% opacity, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off.	See item 2 of this table.
8. Option 1c: Elect NSPS subpart Ja requirements for PM concentration limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 0.040 gr/dscf corrected to 0 percent excess air.	See item 4 of this table.
9. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off.	Determining and recording each day the average coke burn-off rate and the hours of operation and the hours of operation for each catalyst regenerator by Equation 1 of § 63.1564 (you can use process data to determine the volumetric flow rate); maintaining PM emission rate below 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off; and conducting a performance test before August 1, 2017 and thereafter following the testing frequency in § 63.1571(a)(5) as applicable to your unit.
10. Option 3: Ni lb/hr limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Ni emissions must not exceed 13,000 mg/hr (0.029 lb/hr).	Maintaining Ni emission rate below 13,000 mg/hr (0.029 lb/hr); and conducting a performance test before August 1, 2017 and thereafter following the testing frequency in § 63.1571(a)(5) as applicable to your unit.
11. Option 4: Ni per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Ni emissions must not exceed 1.0 mg/kg (0.001 lb/1,000 lb) of coke burn-off in the catalyst regenerator.	Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) and the hours of operation for each catalyst regenerator by Equation 1 of § 63.1564 (you can use process data to determine the volumetric flow rate); and maintaining Ni emission rate below 1.0 mg/kg (0.001 lb/1,000 lb) of coke burn-off in the catalyst regenerator; and conducting a performance test before August 1, 2017 and thereafter following the testing frequency in § 63.1571(a)(5) as applicable to your unit.

■ 58. Table 7 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1564(c)(1), you shall meet each requirement in the following table that applies to you.

TABLE 7 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
1. Subject to NSPS for PM in 40 CFR 60.102 and not electing § 60.100(e).	Continuous opacity monitoring system.	The 3-hour average opacity of emissions from your catalyst regenerator vent must not exceed 20 percent.	Collecting the continuous opacity monitoring data for each regenerator vent according to § 63.1572 and maintain each 3-hour rolling average opacity of emissions no higher than 20 percent.

TABLE 7 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
2. Subject to NSPS for PM in 40 CFR 60.102a(b)(1); or 40 CFR 60.102 and elect § 60.100(e), electing to meet the PM per coke burn-off limit.	a. Continuous opacity monitoring system, used for site-specific opacity limit—Cyclone or electrostatic precipitator. b. Continuous parametric monitoring systems—electrostatic precipitator. c. Continuous parametric monitoring systems—wet scrubber. d. BLD—fabric filter	The average opacity must not exceed the opacity established during the performance test. i. The average gas flow rate entering or exiting the control device must not exceed the operating limit established during the performance test. ii. The average total power and secondary current to the control device must not fall below the operating limit established during the performance test. i. The average liquid-to-gas ratio must not fall below the operating limit established during the performance test. ii. Except for periods of startup, shutdown and hot standby, the average pressure drop across the scrubber must not fall below the operating limit established during the performance test. Increases in relative particulate	Collecting the hourly and 3-hr rolling average opacity monitoring data according to § 63.1572; maintaining the 3-hr rolling average opacity at or above the site-specific limit established during the performance test. Collecting the hourly and daily average coke burn-off rate or average gas flow rate monitoring data according to § 63.1572; and maintaining the daily average coke burn-off rate or average gas flow rate at or below the limit established during the performance test. Collecting the hourly and 3-hr rolling average total power and secondary current monitoring data according to § 63.1572; and maintaining the 3-hr rolling average total power and secondary current at or above the limit established during the performance test. Collecting the hourly and 3-hr rolling average gas flow rate and scrubber liquid flow rate monitoring data according to § 63.1572; determining and recording the 3-hr liquid-to-gas ratio; and maintaining the 3-hr rolling average liquid-to-gas ratio at or above the limit established during the performance test. Collecting the hourly and 3-hr rolling average pressure drop monitoring data according to § 63.1572; and except for periods of startup, shutdown and hot standby, maintaining the 3-hr rolling average pressure drop at or above the limit established during the performance test. Collecting and maintaining records of BLD system output; determining the cause of the alarm within 1 hour of the alarm; and alleviating the cause of the alarm within 3 hours by corrective action.
3. Subject to NSPS for PM in 40 CFR 60.102a(b)(1), electing to meet the PM concentration limit.	PM CEMS	Not applicable	Complying with Table 6 of this subpart, item 4 or 5.
4. Option 1a: Elect NSPS subpart J requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Continuous opacity monitoring system.	The 3-hour average opacity of emissions from your catalyst regenerator vent must not exceed 20 percent.	Collecting the 3-hr rolling average continuous opacity monitoring system data according to § 63.1572; and maintaining the 3-hr rolling average opacity no higher than 20 percent.
5. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	a. Continuous opacity monitoring system.	The opacity of emissions from your catalyst regenerator vent must not exceed the site-specific opacity operating limit established during the performance test.	Collecting the 3-hr rolling average continuous opacity monitoring system data according to § 63.1572; maintaining the 3-hr rolling average opacity at or below the site-specific limit.

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
6. Option 1c: Elect NSPS subpart Ja requirements for PM concentration limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1). 7. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	b. Continuous parametric monitoring systems—electrostatic precipitator. c. Continuous parametric monitoring systems—wet scrubber. d. BLD—fabric filter PM CEMS	See item 2.b of this table See item 2.c of this table See item 2.d of this table Not applicable	See item 2.b of this table. See item 2.c of this table. See item 2.d of this table. Complying with Table 6 of this subpart, item 4.
	a. Continuous opacity monitoring system. b. Continuous parameter monitoring systems—electrostatic precipitator.	The opacity of emissions from your catalyst regenerator vent must not exceed the site-specific opacity operating limit established during the performance test. i. The average coke burn-off rate or average gas flow rate entering or exiting the control device must not exceed the operating limit established during the performance test. ii. The average total power (voltage and current) and secondary current to the control device must not fall below the operating limit established during the performance test.	Collecting the hourly and 3-hr rolling average continuous opacity monitoring system data according to §63.1572; and maintaining the 3-hr rolling average opacity at or below the site-specific limit established during the performance test. Alternatively, before August 1, 2017, collecting the hourly average continuous opacity monitoring system data according to §63.1572; and maintaining the hourly average opacity at or below the site-specific limit. Collecting the hourly and daily average coke burn-off rate or gas flow rate monitoring data according to §63.1572; and maintaining the daily coke burn-off rate or average gas flow rate at or below the limit established during the performance test. Collecting the hourly and 3-hr rolling average total power and secondary current monitoring data according to §63.1572; and maintaining the 3-hr rolling average total power and secondary current at or above the limit established during the performance test. Alternatively, before August 1, 2017, collecting the hourly and daily average voltage and secondary current (or total power input) monitoring data according to §63.1572; and maintaining the daily average voltage and secondary current (or total power input) at or above the limit established during the performance test.

TABLE 7 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
8. Option 3: Ni lb/hr limit not subject to the NSPS for PM in 40 CFR 60.102.	c. Continuous parameter monitoring systems—wet scrubber.	i. The average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	Collecting the hourly and 3-hr rolling average gas flow rate and scrubber liquid flow rate monitoring data according to § 63.1572; determining and recording the 3-hr liquid-to-gas ratio; and maintaining the 3-hr rolling average liquid-to-gas ratio at or above the limit established during the performance test. Alternatively, before August 1, 2017, collecting the hourly average gas flow rate and water (or scrubbing liquid) flow rate monitoring data according to § 63.1572 ¹ ; determining and recording the hourly average liquid-to-gas ratio; determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.
		ii. Except for periods of startup, shutdown and hot standby, the average pressure drop across the scrubber must not fall below the operating limit established during the performance test.	Collecting the hourly and 3-hr rolling average pressure drop monitoring data according to § 63.1572; and except for periods of startup, shutdown and hot standby, maintaining the 3-hr rolling average pressure drop at or above the limit established during the performance test. Alternatively, before August 1, 2017, collecting the hourly and daily average pressure drop monitoring data according to § 63.1572; and maintaining the daily average pressure drop above the limit established during the performance test.
	d. BLD—fabric filter	See item 2.d of this table	See item 2.d of this table.
	a. Continuous opacity monitoring system.	i. The daily average Ni operating value must not exceed the site-specific Ni operating limit established during the performance test.	(1) Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; determining and recording equilibrium catalyst Ni concentration at least once a week ² ; collecting the hourly average gas flow rate monitoring data according to § 63.1572 ¹ ; and determining and recording the hourly average Ni operating value using Equation 11 of § 63.1564.

TABLE 7 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The average gas flow rate entering or exiting the control device must not exceed the operating limit established during the performance test. ii. The average total power (voltage and current) and secondary current must not fall below the level established in the performance test. iii. The monthly rolling average of the equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	(2) Determining and recording the 3-hour rolling average Ni operating value and maintaining the 3-hour rolling average Ni operating value below the site-specific Ni operating limit established during the performance test. Alternatively, before August 1, 2017, determining and recording the daily average Ni operating value and maintaining the daily average Ni operating value below the site-specific Ni operating limit established during the performance test. See item 7.b.i of this table. See item 7.b.ii of this table. Determining and recording the equilibrium catalyst Ni concentration at least once a week ² ; determining and recording the monthly rolling average of the equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test. See item 7.c.i of this table.
	c. Continuous parameter monitoring systems—wet scrubber.	i. The average liquid-to-gas ratio must not fall below the operating limit established during the performance test.. ii. Except for periods of startup, shutdown and hot standby, the average pressure drop must not fall below the operating limit established in the performance test. iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 7.c.ii of this table. Determining and recording the equilibrium catalyst Ni concentration at least once a week ² ; determining and recording the monthly rolling average of equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test.
	d. BLD—fabric filter	i. Increases in relative particulate	See item 7.d of this table.

TABLE 7 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
9. Option 4: Ni per coke burn-off limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	ii. The monthly rolling average of the equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	Determining and recording the equilibrium catalyst Ni concentration at least once a week ² ; determining and recording the monthly rolling average of the equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test.
		i. The daily average Ni operating value must not exceed the site-specific Ni operating limit established during the performance test.	(1) Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; collecting the hourly average coke burn rate and hourly average gas flow rate monitoring data according to § 63.15721; determining and recording equilibrium catalyst Ni concentration at least once a week ² ; and determining and recording the hourly average Ni operating value using Equation 12 of § 63.1564. (2) Determining and recording the 3-hour rolling average Ni operating value and maintaining the 3-hour rolling average Ni operating value below the site-specific Ni operating limit established during the performance test. Alternatively, before August 1, 2017, determining and recording the daily average Ni operating value and maintaining the daily average Ni operating value below the site-specific Ni operating limit established during the performance test.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The average gas flow rate to the control device must not exceed the level established in the performance test.	See item 7.b.i of this table.
		ii. The average voltage and secondary current (or total power input) must not fall below the level established in the performance test.	See item 7.b.ii of this table.
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 8.b.iii of this table.
	c. Continuous parameter monitoring systems—wet scrubber.	i. The average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	See item 7.c.i of this table.
		ii. Except for periods of startup, shutdown and hot standby, the daily average pressure drop must not fall below the operating limit established in the performance test.	See item 7.c.ii of this table.

TABLE 7 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
	d. BLD—fabric filter	iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test. i. See item 2.d of this table ii. The monthly rolling average of the equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 8.c.iii of this table. See item 2.d of this table. Determining and recording the equilibrium catalyst Ni concentration at least once a week ² ; determining and recording the monthly rolling average of the equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test.
10. During periods of startup, shutdown, or hot standby.	Any control device, if elected	The inlet velocity limit to the primary internal cyclones of the catalytic cracking unit catalyst regenerator in § 63.1564(a)(5)(ii).	Meeting the requirements in § 63.1564(c)(5).

¹ If applicable, you can use the alternative in § 63.1573(a)(1) for gas flow rate instead of a continuous parameter monitoring system if you used the alternative method in the initial performance test.

² The equilibrium catalyst Ni concentration must be measured by the procedure, Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure) in appendix A to this subpart; or by EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, or EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration; or by an alternative to EPA Method 6010B, 6020, 7520, or 7521 satisfactory to the Administrator. The EPA Methods 6010B, 6020, 7520, and 7521 are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Revision 5 (April 1998). The SW-846 and Updates (document number 955-001-00000-1) are available for purchase from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, (202) 512-1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. Copies may be inspected at the EPA Docket Center, William Jefferson Clinton (WJC) West Building (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. These methods are also available at <http://www.epa.gov/epaoswer/hazwaste/test/main.htm>.

■ 59. Table 8 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1565(a)(1), you shall meet each emission limitation in the following table that applies to you.

TABLE 8 TO SUBPART UUU OF PART 63—ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

For each new and existing catalytic cracking unit . . .	You shall meet the following emission limit for each catalyst regenerator vent . . .
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103 or 60.102a(b)(4).	CO emissions from the catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 parts per million volume (ppmv) (dry basis).
2. Not subject to the NSPS for CO in 40 CFR 60.103 or 60.102a(b)(4)	a. CO emissions from the catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis). b. If you use a flare to meet the CO limit, then on and after January 30, 2019, the flare must meet the requirements of § 63.670. Prior to January 30, 2019, the flare must meet the requirements for control devices in § 63.11(b) and visible emissions must not exceed a total of 5 minutes during any 2 consecutive hours, or the flare must meet the requirements of § 63.670.

■ 60. Table 9 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1565(a)(2), you shall meet each operating limit in the following table that applies to you.

TABLE 9 TO SUBPART UUU OF PART 63—OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

For each new or existing catalytic cracking unit . . .	For this type of continuous monitoring system . . .	For this type of control device . . .	You shall meet this operating limit . . .
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103 or 60.102a(b)(4).	Continuous emission monitoring system.	Not applicable	Not applicable.
2. Not subject to the NSPS for CO in 40 CFR 60.103 or 60.102a(b)(4).	a. Continuous emission monitoring system.	Not applicable	Not applicable.
	b. Continuous parameter monitoring systems.	i. Thermal incinerator	Maintain the daily average combustion zone temperature above the limit established during the performance test; and maintain the daily average oxygen concentration in the vent stream (percent, dry basis) above the limit established during the performance test.
		ii. Boiler or process heater with a design heat input capacity under 44 MW or a boiler or process heater in which all vent streams are not introduced into the flame zone.	Maintain the daily average combustion zone temperature above the limit established in the performance test.
		iii. Flare	On and after January 30, 2019, the flare must meet the requirements of § 63.670. Prior to January 30, 2019, the flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it, or the flare must meet the requirements of § 63.670.
3. During periods of startup, shutdown or hot standby.	Any	Any	Meet the requirements in § 63.1565(a)(5).

■ 61. Table 10 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1565(b)(1), you shall meet each requirement in the following table that applies to you.

TABLE 10 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

For each new or existing catalytic cracking unit . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain this type of continuous monitoring system . . .
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103 or 60.102a(b)(4).	Not applicable	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent.
2. Not subject to the NSPS for CO in 40 CFR 60.103 or 60.102a(b)(4).	a. Thermal incinerator	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the combustion zone temperature and oxygen content (percent, dry basis) in the incinerator vent stream.
	b. Process heater or boiler with a design heat input capacity under 44 MW or process heater or boiler in which all vent streams are not introduced into the flame zone.	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the combustion zone temperature.

TABLE 10 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new or existing catalytic cracking unit . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain this type of continuous monitoring system . . .
3. During periods of startup, shutdown or hot standby electing to comply with the operating limit in § 63.1565(a)(5)(ii).	c. Flare	On and after January 30, 2019, the monitoring systems required in §§ 63.670 and 63.671. Prior to January 30, 2019, monitoring device such as a thermocouple, an ultraviolet beam sensor, or infrared sensor to continuously detect the presence of a pilot flame, or the monitoring systems required in §§ 63.670 and 63.671.
	d. No control device	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent.
	Any	Continuous parameter monitoring system to measure and record the concentration by volume (dry basis) of oxygen from each catalyst regenerator vent.

■ 62. Table 11 to subpart UUU of part 63 is amended by revising the entry for item 3 to read as follows:

* * * * *

TABLE 11 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR CARBON MONOXIDE (CO)

For . . .	You must . . .	Using . . .	According to these requirements . . .
* * * * *	* * * * *	* * * * *	*
3. Each catalytic cracking unit catalyst regenerator vent if you use continuous parameter monitoring systems.	a. Measure the CO concentration (dry basis) of emissions exiting the control device. b. Establish each operating limit in Table 9 of this subpart that applies to you. c. Thermal incinerator combustion zone temperature. d. Thermal incinerator: oxygen, content (percent, dry basis) in the incinerator vent stream. e. If you use a process heater or boiler with a design heat input capacity under 44 MW or process heater or boiler in which all vent streams are not introduced into the flame zone, establish operating limit for combustion zone temperature.	Method 10, 10A, or 10B in appendix A–4 to part 60 of this chapter, as applicable. Data from the continuous parameter monitoring systems. Data from the continuous parameter monitoring systems. Data from the continuous parameter monitoring systems. Data from the continuous parameter monitoring systems.	Collect temperature monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average combustion zone temperature from all the readings. Collect oxygen concentration (percent, dry basis) monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average percent excess oxygen concentration from all the readings. Collect the temperature monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average combustion zone temperature from all the readings.

TABLE 11 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR CARBON MONOXIDE (CO)—Continued

For . . .	You must . . .	Using . . .	According to these requirements . . .
	f. If you use a flare, conduct visible emission observations.	Method 22 (40 CFR part 60, appendix A–7).	On and after January 30, 2019, meet the requirements of § 63.670. Prior to January 30, 2019, maintain a 2-hour observation period; and record the presence of a flame at the pilot light over the full period of the test or meet the requirements of § 63.670.
	g. If you use a flare, determine that the flare meets the requirements for net heating value of the gas being combusted and exit velocity.	40 CFR 63.11(b)(6) through (8)	On and after January 30, 2019, the flare must meet the requirements of § 63.670. Prior to January 30, 2019, the flare must meet the control device requirements in § 63.11(b) or the requirements of § 63.670.

■ 63. Table 12 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1565(b)(4), you shall meet each requirement in the following table that applies to you.

TABLE 12 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

For each new and existing catalytic cracking unit . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103, 60.100(e), or 60.102a(b)(4).	CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured CO emissions are less than or equal to 500 ppm (dry basis). As part of the Notification of Compliance Status, you must certify that your vent meets the CO limit. You are not required to conduct another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to conduct another performance evaluation to demonstrate initial compliance.
2. Not subject to the NSPS for CO in 40 CFR 60.103 60.102a(b)(4).	a. CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis). b. If you use a flare, visible emissions must not exceed a total of 5 minutes during any 2 operating hours.	i. If you use a continuous parameter monitoring system, the average CO emissions measured by Method 10 over the period of the initial performance test are less than or equal to 500 ppmv (dry basis). ii. If you use a continuous emission monitoring system, the hourly average CO emissions over the 24-hour period for the initial performance test are not more than 500 ppmv (dry basis); and your performance evaluation shows your continuous emission monitoring system meets the applicable requirements in § 63.1572. On and after January 30, 2019, the flare meets the requirements of § 63.670. Prior to January 30, 2019, visible emissions, measured by Method 22 during the 2-hour observation period during the initial performance test, are no higher than 5 minutes, or the flare meets the requirements of § 63.670.

■ 64. Table 13 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1565(c)(1), you shall meet each requirement in the following table that applies to you.

TABLE 13 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

For each new and existing catalytic cracking unit . . .	Subject to this emission limit for your catalyst regenerator vent . . .	If you must . . .	You shall demonstrate continuous compliance by . . .
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103, 60.100(e), or 60.102a(b)(4).	CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	Continuous emission monitoring system.	Collecting the hourly average CO monitoring data according to §63.1572; and maintaining the hourly average CO concentration at or below 500 ppmv (dry basis).
2. Not subject to the NSPS for CO in 40 CFR 60.103 or 60.102a(b)(4).	a. CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis). b. CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis). c. Visible emissions from a flare must not exceed a total of 5 minutes during any 2-hour period.	Continuous emission monitoring system. Continuous parameter monitoring system. Control device-flare	Same as item 1. Maintaining the hourly average CO concentration below 500 ppmv (dry basis). On and after January 30, 2019, meeting the requirements of §63.670. Prior to January 30, 2019, maintaining visible emissions below a total of 5 minutes during any 2-hour operating period, or meeting the requirements of §63.670.

■ 65. Table 14 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1565(c)(1), you shall meet each requirement in the following table that applies to you.

TABLE 14 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

For each new existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
1. Subject to NSPS for carbon monoxide (CO) in 40 CFR 60.103, 60.100(e), 60.102a(b)(4).	Continuous emission monitoring system.	Not applicable	Complying with Table 13 of this subpart, item 1.
2. Not subject to the NSPS for CO in 40 CFR 60.103 or 60.102a(b)(4).	a. Continuous emission monitoring system. b. Continuous parameter monitoring systems—thermal incinerator. c. Continuous parameter monitoring systems—boiler or process heater with a design heat input capacity under 44 MW or boiler or process heater in which all vent streams are not introduced into the flame zone.	Not applicable	Complying with Table 13 of this subpart, item 2.a.
		i. The daily average combustion zone temperature must not fall below the level established during the performance test. ii. The daily average oxygen concentration in the vent stream (percent, dry basis) must not fall below the level established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to §63.1572; and maintaining the daily average combustion zone temperature above the limit established during the performance test. Collecting the hourly and daily average oxygen concentration monitoring data according to §63.1572; and maintaining the daily average oxygen concentration above the limit established during the performance test.
		The daily combustion zone temperature must not fall below the level established in the performance test.	Collecting the average hourly and daily temperature monitoring data according to §63.1572; and maintaining the daily average combustion zone temperature above the limit established during the performance test.

TABLE 14 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

For each new existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
	d. Continuous parameter monitoring system—flare.	The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it.	On and after January 30, 2019, meeting the requirements of § 63.670. Prior to January 30, 2019, collecting the flare monitoring data according to § 63.1572 and recording for each 1-hour period whether the monitor was continuously operating and the pilot light was continuously present during each 1-hour period, or meeting the requirements of § 63.670.
3. During periods of startup, shutdown or hot standby electing to comply with the operating limit in § 63.1565(a)(5)(ii).	Any control device	The oxygen concentration limit in § 63.1565(a)(5)(ii).	Collecting the hourly average oxygen concentration monitoring data according to § 63.1572 and maintaining the hourly average oxygen concentration at or above 1 volume percent (dry basis).

■ 66. Table 15 to subpart UUU of part 63 is amended by revising the entry for item 1 to read as follows:

* * * * *

TABLE 15 TO SUBPART UUU OF PART 63—ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

For each applicable process vent for a new or existing catalytic reforming unit . . .	You shall meet this emission limit during initial catalyst depressuring and catalyst purging operations . . .
1. Option 1	On and after January 30, 2019, vent emissions to a flare that meets the requirements of § 63.670. Prior to January 30, 2019, vent emissions to a flare that meets the requirements for control devices in § 63.11(b) and visible emissions from a flare must not exceed a total of 5 minutes during any 2-hour operating period, or vent emissions to a flare that meets the requirements of § 63.670.
* * * * *	* * * * *

■ 67. Table 16 to subpart UUU of part 63 is amended by revising the entry for item 1 to read as follows:

* * * * *

TABLE 16 TO SUBPART UUU OF PART 63—OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

For each new or existing catalytic reforming unit . . .	For this type of control device . . .	You shall meet this operating limit during initial catalyst depressuring and purging operations. . .
1. Option 1: Vent to flare	Flare	On and after January 30, 2019, the flare must meet the requirements of § 63.670. Prior to January 30, 2019, the flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it, or the flare must meet the requirements of § 63.670.
* * * * *	* * * * *	* * * * *

■ 68. Table 17 to subpart UUU of part 63 is amended by revising the entry for item 1 to read as follows:

* * * * *

TABLE 17 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

For each applicable process vent for a new or existing catalytic reforming unit . . .	If you use this type of control device . . .	You shall install and operate this type of continuous monitoring system . . .
1. Option 1: Vent to a flare	Flare	On and after January 30, 2019, the monitoring systems required in §§ 63.670 and 63.671. Prior to January 30, 2019, monitoring device such as a thermocouple, an ultraviolet beam sensor, or infrared sensor to continuously detect the presence of a pilot flame, or the monitoring systems required in §§ 63.670 and 63.671.
*	*	*

■ 69. Table 18 to subpart UUU of part 63 is amended by revising the column headings and the entry for item 1 to read as follows:

* * * * *

TABLE 18 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

For each new or existing catalytic reforming unit . . .	You must . . .	Using . . .	According to these requirements . . .
1. Option 1: Vent to a flare	a. Conduct visible emission observations.	Method 22 (40 CFR part 60, appendix A–7).	On and after January 30, 2019, the flare must meet the requirements of § 63.670. Prior to January 30, 2019, 2-hour observation period. Record the presence of a flame at the pilot light over the full period of the test, or the requirements of § 63.670.
	b. Determine that the flare meets the requirements for net heating value of the gas being combusted and exit velocity.	40 CFR 63.11(b)(6) through (8)	On and after January 30, 2019, the flare must meet the requirements of § 63.670. Prior to January 30, 2019, the flare must meet the control device requirements in § 63.11(b) or the requirements of § 63.670.
*	*	*	*

■ 70. Table 19 to subpart UUU of part 63 is amended by revising the entry for item 1 to read as follows:

* * * * *

TABLE 19 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

For each applicable process vent for a new or existing catalytic reforming unit . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
Option 1	Visible emissions from a flare must not exceed a total of 5 minutes during any 2 consecutive hours.	On and after January 30, 2019, the flare meets the requirements of § 63.670. Prior to January 30, 2019, visible emissions, measured using Method 22 over the 2-hour observation period of the performance test, do not exceed a total of 5 minutes, or the flare meets the requirements of § 63.670.
*	*	*

■ 71. Table 20 to subpart UUU of part 63 is amended by revising the entry for item 1 to read as follows:

* * * * *

TABLE 20 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

For each applicable process vent for a new or existing catalytic reforming unit . . .	For this emission limit . . .	You shall demonstrate continuous compliance during initial catalyst depressuring and catalyst purging operations by . . .
1. Option 1	Vent emissions from your process vent to a flare.	On and after January 30, 2019, meeting the requirements of § 63.670. Prior to January 30, 2019, maintaining visible emissions from a flare below a total of 5 minutes during any 2 consecutive hours, or meeting the requirements of § 63.670.
*	*	*

■ 72. Table 21 to subpart UUU of part 63 is amended by revising the entry for item 1 to read as follows:

* * * * *

TABLE 21 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

For each applicable process vent for a new or existing catalytic reforming unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance during initial catalyst depressuring and purging operations by . . .
1. Option 1	Flare	The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it.	On and after January 30, 2019, meeting the requirements of § 63.670. Prior to January 30, 2019, collecting flare monitoring data according to § 63.1572 and recording for each 1-hour period whether the monitor was continuously operating and the pilot light was continuously present during each 1-hour period, or meeting the requirements of § 63.670.
*	*	*	*

■ 73. Table 22 to subpart UUU of part 63 is amended by revising the entries for items 2 and 3 to read as follows:

* * * * *

TABLE 22 TO SUBPART UUU OF PART 63—INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

For . . .	You shall meet this emission limit for each applicable catalytic reforming unit process vent during coke burn-off and catalyst rejuvenation . . .
*	*
2. Each existing cyclic or continuous catalytic reforming unit	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.
3. Each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.

■ 74. Table 24 to subpart UUU of part 63 is amended by revising the entries for items 2 through 4 and footnote 2 to read as follows:

* * * * *

TABLE 24 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

If you use this type of control device for your vent . . .	You shall install and operate this type of continuous monitoring system . . .
2. Internal scrubbing system or no control device (<i>e.g.</i> , hot regen system) to meet HCl outlet concentration limit.	Colormetric tube sampling system to measure the HCl concentration in the catalyst regenerator exhaust gas during coke burn-off and catalyst rejuvenation. The colormetric tube sampling system must meet the requirements in Table 41 of this subpart.
3. Internal scrubbing system to meet HCl percent reduction standard ...	Continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation; and continuous parameter monitoring system to measure and record the total water (or scrubbing liquid) flow rate entering the internal scrubbing system during coke burn-off and catalyst rejuvenation; and continuous parameter monitoring system to measure and record the pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation. ²
4. Fixed-bed gas-solid adsorption system	Continuous parameter monitoring system to measure and record the temperature of the gas entering or exiting the adsorption system during coke burn-off and catalyst rejuvenation; and colormetric tube sampling system to measure the gaseous HCl concentration in the adsorption system exhaust and at a point within the absorbent bed not to exceed 90 percent of the total length of the absorbent bed during coke burn-off and catalyst rejuvenation. The colormetric tube sampling system must meet the requirements in Table 41 of this subpart.

²If applicable, you can use the alternative in § 63.1573(c)(1) instead of a continuous parameter monitoring system for pH of the water (or scrubbing liquid) or the alternative in § 63.1573(c)(2) instead of a continuous parameter monitoring system for alkalinity of the water (or scrubbing liquid).

* * * * * items 2.a and 4.a and footnote 1 to read
 ■ 75. Table 25 to subpart UUU of part as follows:
 63 is amended by revising the entries for * * * * *

TABLE 25 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

For each new and existing catalytic reforming unit using . . .	You shall . . .	Using . . .	According to these requirements . . .
2. Wet scrubber	a. Establish operating limit for pH level or alkalinity.	i. Data from continuous parameter monitoring systems.	Measure and record the pH or alkalinity of the water (or scrubbing liquid) exiting scrubber every 15 minutes during the entire period of the performance test. Determine and record the minimum hourly average pH or alkalinity level from the recorded values.
		ii. Alternative pH procedure in § 63.1573(b)(1).	Measure and record the pH of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation using pH strips at least three times during each test run. Determine and record the average pH level for each test run. Determine and record the minimum test run average pH level.

TABLE 25 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

For each new and existing catalytic reforming unit using . . .	You shall . . .	Using . . .	According to these requirements . . .
		iii. Alternative alkalinity method in § 63.1573(c)(2).	Measure and record the alkalinity of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation using discrete titration at least three times during each test run. Determine and record the average alkalinity level for each test run. Determine and record the minimum test run average alkalinity level.
* * *	* * *	* * *	* * *
4. Internal scrubbing system meeting HCl percent reduction standard.	a. Establish operating limit for pH level or alkalinity.	i. Data from continuous parameter monitoring system.	Measure and record the pH alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system every 15 minutes during the entire period of the performance test. Determine and record the minimum hourly average pH or alkalinity level from the recorded values.
		ii. Alternative pH method in § 63.1573(c)(1).	Measure and in record pH of the water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation using pH strips at least three times during each test run. Determine and record the average pH level for each test run. Determine and record the minimum test run average pH level.
		iii. Alternative alkalinity method in § 63.1573(c)(2).	Measure and record the alkalinity water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation using discrete titration at least three times during each test run. Determine and record the average alkalinity level for each test run. Determine and record the minimum test run average alkalinity level.
* * *	* * *	* * *	* * *

¹ The EPA Methods 5050, 9056, 9212 and 9253 are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Revision 5 (April 1998). The SW-846 and Updates (document number 955-001-00000-1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. Copies may be inspected at the EPA Docket Center, William Jefferson Clinton (WJC) West Building (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. These methods are also available at <http://www.epa.gov/epaoswer/hazwaste/test/main.htm>.

■ 76. Table 28 to subpart UUU of part 63 is amended by revising the entry for item 5 and footnotes 1 and 3 to read as follows:

* * * * *

TABLE 28 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

For each new and existing catalytic reforming unit using this type of control device or system . . .	For this operating limit . . .	You shall demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by . . .
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TABLE 28 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

For each new and existing catalytic reforming unit using this type of control device or system . . .	For this operating limit . . .	You shall demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by . . .
5. Moving-bed gas-solid adsorption system (e.g., Chlorsorb™ System).	a. The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test. b. The weekly average chloride level on the sorbent entering the adsorption system must not exceed the design or manufacturer's recommended limit (1.35 weight percent for the Chlorsorb™ System). c. The weekly average chloride level on the sorbent exiting the adsorption system must not exceed the design or manufacturer's recommended limit (1.8 weight percent for the Chlorsorb™ System).	Collecting the hourly and daily average temperature monitoring data according to §63.1572; and maintaining the daily average temperature below the operating limit established during the performance test. Collecting samples of the sorbent exiting the adsorption system three times per week (on non-consecutive days); and analyzing the samples for total chloride³; and determining and recording the weekly average chloride concentration; and maintaining the chloride concentration below the design or manufacturer's recommended limit (1.35 weight percent for the Chlorsorb™ System). Collecting samples of the sorbent exiting the adsorption system three times per week (on non-consecutive days); and analyzing the samples for total chloride concentration; and determining and recording the weekly average chloride concentration; and maintaining the chloride concentration below the design or manufacturer's recommended limit (1.8 weight percent Chlorsorb™ System).

¹ If applicable, you can use either alternative in §63.1573(c) instead of a continuous parameter monitoring system for pH or alkalinity if you used the alternative method in the initial performance test.

³ The total chloride concentration of the sorbent material must be measured by the procedure, "Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)" in appendix A to this subpart; or by using EPA Method 5050, Bomb Preparation Method for Solid Waste, combined either with EPA Method 9056, Determination of Inorganic Anions by Ion Chromatography, or with EPA Method 9253, Chloride (Titrimetric, Silver Nitrate); or by using EPA Method 9212, Potentiometric Determination of Chloride in Aqueous Samples with Ion-Selective Electrode, and using the soil extraction procedures listed within the method. The EPA Methods 5050, 9056, 9212 and 9253 are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Revision 5 (April 1998). The SW-846 and Updates (document number 955-001-00000-1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. Copies may be inspected at the EPA Docket Center, William Jefferson Clinton (WJC) West Building, (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. These methods are also available at <http://www.epa.gov/epaoswer/hazwaste/test/main.htm>.

■ 77. Table 29 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1568(a)(1), you shall meet each emission limitation in the following table that applies to you.

TABLE 29 TO SUBPART UUU OF PART 63—HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

For . . .	You shall meet this emission limit for each process vent . . .
1. Subject to NSPS. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant with design capacity greater than 20 long tons per day (LTD) and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	a. 250 ppmv (dry basis) of sulfur dioxide (SO₂) at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use an oxidation control system or if you use a reduction control system followed by incineration. b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO₂ (dry basis) at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use a reduction control system without incineration.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	a. 250 ppmv (dry basis) of SO₂ at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use an oxidation control system or if you use a reduction control system followed by incineration. b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO₂ (dry basis) at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use a reduction control system without incineration.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	300 ppmv of total reduced sulfur (TRS) compounds, expressed as an equivalent SO ₂ concentration (dry basis) at zero percent oxygen.

■ 78. Table 30 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1568(a)(2), you shall meet each operating limit in the following table that applies to you.

TABLE 30 TO SUBPART UUU OF PART 63—OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

For . . .	If use this type of control device . . .	You shall meet this operating limit . . .
1. Subject to NSPS. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant with design capacity greater than 20 LTD and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	Not applicable	Not applicable.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	Not applicable	Not applicable.
3. Option 2: TRS limit, if using continuous emissions monitoring systems. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	Not applicable	Not applicable.
4. Option 2: TRS limit, if using continuous parameter monitoring systems. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	Thermal incinerator	Maintain the daily average combustion zone temperature above the limit established during the performance test; and maintain the daily average oxygen concentration in the vent stream (percent, dry basis) above the limit established during the performance test.
5. Startup or shutdown option 1: Electing to comply with § 63.1568(a)(4)(ii). Each new or existing sulfur recovery unit (Claus or other type, regardless of size) during periods of startup or shutdown.	Flare	On and after January 30, 2019, meet the applicable requirements of § 63.670. Prior to January 30, 2019, meet the applicable requirements of either § 63.11(b) or § 63.670.
6. Startup or shutdown option 2: Electing to comply with § 63.1568(a)(4)(iii). Each new or existing sulfur recovery unit (Claus or other type, regardless of size) during startup or shutdown events.	Thermal incinerator or thermal oxidizer	Maintain the hourly average combustion zone temperature at or above 1,200 degrees Fahrenheit and maintain the hourly average oxygen concentration in the exhaust gas stream at or above 2 volume percent (dry basis).

■ 79. Table 31 to subpart UUU is revised to read as follows:

As stated in § 63.1568(b)(1), you shall meet each requirement in the following table that applies to you.

TABLE 31 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

For . . .	For this limit . . .	You shall install and operate this continuous monitoring system . . .
1. Subject to NSPS. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant with design capacity greater than 20 LTD and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	a. 250 ppmv (dry basis) of SO ₂ at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of SO ₂ (dry basis) at zero percent excess air for each exhaust stack. This system must include an oxygen monitor for correcting the data for excess air.

TABLE 31 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS—Continued

For . . .	For this limit . . .	You shall install and operate this continuous monitoring system . . .
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO ₂ (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of reduced sulfur and oxygen (O ₂) emissions. Calculate the reduced sulfur emissions as SO ₂ (dry basis) at zero percent excess air. <i>Exception:</i> You can use an instrument having an air or SO ₂ dilution and oxidation system to convert the reduced sulfur to SO ₂ for continuously monitoring and recording the concentration (dry basis) at zero percent excess air of the resultant SO ₂ instead of the reduced sulfur monitor. The monitor must include an oxygen monitor for correcting the data for excess oxygen.
	c. If you use Equation 1 of 40 CFR 60.102a(f)(1)(i) to set your emission limit.	i. Complete either item 1.a or item 1.b; and ii. Either a continuous emission monitoring system to measure and record the O ₂ concentration for the inlet air/oxygen supplied to the system or a continuous parameter monitoring system to measure and record the volumetric gas flow rate of ambient air and purchased oxygen-enriched gas.
	a. 250 ppmv (dry basis) of SO ₂ at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of SO ₂ (dry basis), at zero percent excess air for each exhaust stack. This system must include an oxygen monitor for correcting the data for excess air.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO ₂ (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of reduced sulfur and O ₂ emissions for each exhaust stack. Calculate the reduced sulfur emissions as SO ₂ (dry basis), at zero percent excess air. <i>Exception:</i> You can use an instrument having an air or O ₂ dilution and oxidation system to convert the reduced sulfur to SO ₂ for continuously monitoring and recording the concentration (dry basis) at zero percent excess air of the resultant SO ₂ instead of the reduced sulfur monitor. The monitor must include an oxygen monitor for correcting the data for excess oxygen.
	c. If you use Equation 1 of 40 CFR 60.102a(f)(1)(i) to set your emission limit.	i. Complete either item 2.a or item 2.b; and ii. Either a continuous emission monitoring system to measure and record the O ₂ concentration for the inlet air/oxygen supplied to the system, or a continuous parameter monitoring system to measure and record the volumetric gas flow rate of ambient air and purchased oxygen-enriched gas.
	a. 300 ppmv of total reduced sulfur (TRS) compounds, expressed as an equivalent SO ₂ concentration (dry basis) at zero percent oxygen.	i. Continuous emission monitoring system to measure and record the hourly average concentration of TRS for each exhaust stack; this monitor must include an oxygen monitor for correcting the data for excess oxygen; or ii. Continuous parameter monitoring systems to measure and record the combustion zone temperature of each thermal incinerator and the oxygen content (percent, dry basis) in the vent stream of the incinerator.

TABLE 31 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS—Continued

For . . .	For this limit . . .	You shall install and operate this continuous monitoring system . . .
4. Startup or shutdown option 1: electing to comply with § 63.1568(a)(4)(ii). Each new or existing sulfur recovery unit (Claus or other type, regardless of size) during periods of startup or shutdown.	Any	On and after January 30, 2019, monitoring systems as specified in §§ 63.670 and 63.671. Prior to January 30, 2019, either continuous parameter monitoring systems following the requirements in § 63.11 (to detect the presence of a flame; to measure and record the net heating value of the gas being combusted; and to measure and record the volumetric flow of the gas being combusted) or monitoring systems as specified in §§ 63.670 and 63.671.
5. Startup or shutdown option 2: electing to comply with § 63.1568(a)(4)(iii). Each new or existing sulfur recovery unit (Claus or other type, regardless of size) during periods of startup or shutdown.	Any	Continuous parameter monitoring systems to measure and record the firebox temperature of each thermal incinerator or oxidizer and the oxygen content (percent, dry basis) in the exhaust vent from the incinerator or oxidizer.

■ 80. Table 32 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1568(b)(2) and (3), you shall meet each requirement in the following table that applies to you.

TABLE 32 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS FOR SULFUR OXIDES

For . . .	You must . . .	Using . . .	According to these requirements . . .
1. Option 1: Elect NSPS. Each new and existing sulfur recovery unit.	a. Measure SO₂ concentration (for an oxidation or reduction system followed by incineration) or measure the concentration of reduced sulfur (or SO₂ if you use an instrument to convert the reduced sulfur to SO₂) for a reduction control system without incineration. b. Measure O₂ concentration for the inlet air/oxygen supplied to the system, if using Equation 1 of 40 CFR 60.102a(f)(1)(i) to set your emission limit. You may use either an O₂ CEMS method in item 1.b.i of this table or the flow monitor in item 1.b.ii of this table.	Data from continuous emission monitoring system. i. Data from continuous emission monitoring system; or ii. Data from flow monitor for ambient air and purchased oxygen-enriched gas.	Collect SO₂ monitoring data every 15 minutes for 24 consecutive operating hours. Reduce the data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period. Collect O₂ monitoring data every 15 minutes for 24 consecutive operating hours. Reduce the data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period; and average over the 24-hour period for input to Equation 1 of 40 CFR 60.102a(f)(1)(i). Collect gas flow rate monitoring data every 15 minutes for 24 consecutive operating hours. Reduce the data to 1-hour averages computed from 4 or more data points equally spaced over each 1-hour period; calculate the hourly O₂ percent using Equation 10 of 40 CFR 60.106a(a)(6)(iv); and average over the 24-hour period for input to Equation 1 of 40 CFR 60.102a(f)(1)(i).
2. Option 2: TRS limit, using CEMS. Each new and existing sulfur recovery unit.	Measure the concentration of reduced sulfur (or SO ₂ if you use an instrument to convert the reduced sulfur to SO ₂).	Data from continuous emission monitoring system.	Collect TRS data every 15 minutes for 24 consecutive operating hours. Reduce the data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period.

TABLE 32 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS FOR SULFUR OXIDES—Continued

For . . .	You must . . .	Using . . .	According to these requirements . . .
3. Option 2: TRS limit, if using continuous parameter monitoring systems. Each new and existing sulfur recovery unit.	a. Select sampling port's location and the number of traverse ports. b. Determine velocity and volumetric flow rate. c. Conduct gas molecular weight analysis; obtain the oxygen concentration needed to correct the emission rate for excess air. d. Measure moisture content of the stack gas. e. Measure the concentration of TRS. f. Calculate the SO₂ equivalent for each run after correcting for moisture and oxygen. g. Correct the reduced sulfur samples to zero percent excess air. h. Establish each operating limit in Table 30 of this subpart that applies to you. i. Measure thermal incinerator: combustion zone temperature. j. Measure thermal incinerator: oxygen concentration (percent, dry basis) in the vent stream.	Method 1 or 1A in Appendix A–1 to part 60 of this chapter. Method 2, 2A, 2C, 2D, or 2F in appendix A–1 to part 60 of this chapter, or Method 2G in appendix A–2 to part 60 of this chapter, as applicable. Method 3, 3A, or 3B in appendix A–2 to part 60 of this chapter, as applicable. Method 4 in appendix A–3 to part 60 of this chapter. Method 15 or 15A in appendix A–5 to part 60 of this chapter, as applicable. The arithmetic average of the SO₂ equivalent for each sample during the run. Equation 1 of § 63.1568 Data from the continuous parameter monitoring system. Data from the continuous parameter monitoring system. Data from the continuous parameter monitoring system.	Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere. Take the samples simultaneously with reduced sulfur or moisture samples. Make your sampling time for each Method 4 sample equal to that for 4 Method 15 samples. If the cross-sectional area of the duct is less than 5 square meters (m²) or 54 square feet, you must use the centroid of the cross section as the sampling point. If the cross-sectional area is 5 m² or more and the centroid is more than 1 meter (m) from the wall, your sampling point may be at a point no closer to the walls than 1 m or 39 inches. Your sampling rate must be at least 3 liters per minute or 0.10 cubic feet per minute to ensure minimum residence time for the sample inside the sample lines. Collect temperature monitoring data every 15 minutes during the entire period of the performance test; and determine and record the minimum hourly average temperature from all the readings. Collect oxygen concentration (percent, dry basis) data every 15 minutes during the entire period of the performance test; and determine and record the minimum hourly average percent excess oxygen concentration.

■ 81. Table 33 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1568(b)(5), you shall meet each requirement in the following table that applies to you.

TABLE 33 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Subject to NSPS: Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant with design capacity greater than 20 LTD and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	a. 250 ppmv (dry basis) SO₂ at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use an oxidation or reduction control system followed by incineration. b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO₂ (dry basis) at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use a reduction control system without incineration.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and each 12-hour rolling average concentration of SO₂ emissions measured by the continuous emission monitoring system is less than or equal to 250 ppmv (dry basis) at zero percent excess air, or the concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i). As part of the Notification of Compliance Status, you must certify that your vent meets the SO₂ limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to do another performance evaluation to demonstrate initial compliance. You have already conducted a performance test to demonstrate initial compliance with the NSPS and each 12-hour rolling average concentration of reduced sulfur compounds measured by your continuous emission monitoring system is less than or equal to 300 ppmv, calculated as ppmv SO₂ (dry basis) at zero percent excess air, or the concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i). As part of the Notification of Compliance Status, you must certify that your vent meets the SO₂ limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to do another performance evaluation to demonstrate initial compliance.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	a. 250 ppmv (dry basis) of SO₂ at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use an oxidation or reduction control system followed by incineration. b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO₂ (dry basis) at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use a reduction control system without incineration.	Each 12-hour rolling average concentration of SO₂ emissions measured by the continuous emission monitoring system during the initial performance test is less than or equal to 250 ppmv (dry basis) at zero percent excess air, or the concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i); and your performance evaluation shows the monitoring system meets the applicable requirements in § 63.1572. Each 12-hour rolling average concentration of reduced sulfur compounds measured by the continuous emission monitoring system during the initial performance test is less than or equal to 300 ppmv, calculated as ppmv SO₂ (dry basis) at zero percent excess air, or the concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i); and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.

TABLE 33 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS—Continued

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	300 ppmv of TRS compounds expressed as an equivalent SO ₂ concentration (dry basis) at zero percent oxygen.	If you use continuous parameter monitoring systems, the average concentration of TRS emissions measured using Method 15 during the initial performance test is less than or equal to 300 ppmv expressed as equivalent SO ₂ concentration (dry basis) at zero percent oxygen. If you use a continuous emission monitoring system, each 12-hour rolling average concentration of TRS emissions measured by the continuous emission monitoring system during the initial performance test is less than or equal to 300 ppmv expressed as an equivalent SO ₂ (dry basis) at zero percent oxygen; and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.

■ 82. Table 34 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1568(c)(1), you shall meet each requirement in the following table that applies to you.

TABLE 34 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

For . . .	For this emission limit . . .	You shall demonstrate continuous compliance by . . .
1. Subject to NSPS. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant with design capacity greater than 20 LTD and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	a. 250 ppmv (dry basis) of SO₂ at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use an oxidation or reduction control system followed by incineration. b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO₂ (dry basis) at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use a reduction control system without incineration.	Collecting the hourly average SO₂ monitoring data (dry basis, percent excess air) and, if using Equation 1 of 40 CFR 60.102a(f)(1)(i), collecting the hourly O₂ concentration or flow monitoring data according to § 63.1572; determining and recording each 12-hour rolling average concentration of SO₂; maintaining each 12-hour rolling average concentration of SO₂ at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of SO₂ greater than the applicable emission limitation in the semiannual compliance report required by § 63.1575. Collecting the hourly average reduced sulfur (and air or O₂ dilution and oxidation) monitoring data and, if using Equation 1 of 40 CFR 60.102a(f)(1)(i), collecting the hourly O₂ concentration or flow monitoring data according to § 63.1572; determining and recording each 12-hour rolling average concentration of reduced sulfur; maintaining each 12-hour rolling average concentration of reduced sulfur at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of reduced sulfur greater than the applicable emission limitation in the semiannual compliance report required by § 63.1575.

TABLE 34 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS—Continued

For . . .	For this emission limit . . .	You shall demonstrate continuous compliance by . . .
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	a. 250 ppmv (dry basis) of SO₂ at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use an oxidation or reduction control system followed by incineration. b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO₂ (dry basis) at zero percent excess air, or concentration determined using Equation 1 of 40 CFR 60.102a(f)(1)(i), if you use a reduction control system without incineration.	Collecting the hourly average SO₂ data (dry basis, percent excess air) and, if using Equation 1 of 40 CFR 60.102a(f)(1)(i), collecting the hourly O₂ concentration or flow monitoring data according to § 63.1572; determining and recording each 12-hour rolling average concentration of SO₂; maintaining each 12-hour rolling average concentration of SO₂ at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of SO₂ greater than the applicable emission limitation in the semiannual compliance report required by § 63.1575. Collecting the hourly average reduced sulfur (and air or O₂ dilution and oxidation) monitoring data and, if using Equation 1 of 40 CFR 60.102a(f)(1)(i), collecting the hourly O₂ concentration or flow monitoring data according to § 63.1572; determining and recording each 12-hour rolling average concentration of reduced sulfur; maintaining each 12-hour rolling average concentration of reduced sulfur at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of reduced sulfur greater than the applicable emission limitation in the semiannual compliance report required by § 63.1575.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	300 ppmv of TRS compounds, expressed as an SO ₂ concentration (dry basis) at zero percent oxygen or reduced sulfur compounds calculated as ppmv SO ₂ (dry basis) at zero percent excess air.	i. If you use continuous parameter monitoring systems, collecting the hourly average TRS monitoring data according to § 63.1572 and maintaining each 12-hour average concentration of TRS at or below the applicable emission limitation; or ii. If you use a continuous emission monitoring system, collecting the hourly average TRS monitoring data according to § 63.1572, determining and recording each 12-hour rolling average concentration of TRS; maintaining each 12-hour rolling average concentration of TRS at or below the applicable emission limitation; and reporting any 12-hour rolling average TRS concentration greater than the applicable emission limitation in the semiannual compliance report required by § 63.1575.

■ 83. Table 35 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1568(c)(1), you shall meet each requirement in the following table that applies to you.

TABLE 35 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

For . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
1. Subject to NSPS. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant with design capacity greater than 20 LTD and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	Not applicable	Meeting the requirements of Table 34 of this subpart.

TABLE 35 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS—Continued

For . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	Not applicable	Meeting the requirements of Table 34 of this subpart.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2) or 60.102a(f)(1).	a. Maintain the daily average combustion zone temperature above the level established during the performance test. b. The daily average oxygen concentration in the vent stream (percent, dry basis) must not fall below the level established during the performance test..	Collecting the hourly and daily average temperature monitoring data according to §63.1572; and maintaining the daily average combustion zone temperature at or above the limit established during the performance test Collecting the hourly and daily average O₂ monitoring data according to §63.1572; and maintaining the average O₂ concentration above the level established during the performance test.
4. Startup or shutdown option 1: Electing to comply with §63.1568(a)(4)(ii). Each new or existing sulfur recovery unit (Claus or other type, regardless of size) during periods of startup or shutdown.	Using a flare meeting the requirements in §63.11(b) or §63.670.	On and after January 30, 2019, complying with the applicable requirements of §63.670. Prior to January 30, 2019, complying with the applicable requirements of either §63.11(b) or §63.670.
5. Startup or shutdown option 2: Electing to comply with §63.1568(a)(4)(iii). Each new or existing sulfur recovery unit (Claus or other type, regardless of size) during periods of startup or shutdown.	a. Minimum hourly average temperature of 1,200 degrees Fahrenheit. b. Minimum hourly average outlet oxygen concentration of 2 volume percent (dry basis).	Collecting continuous (at least once every 15 minutes) and hourly average temperature monitoring data according to §63.1572; and maintaining the daily average firebox temperature at or above 1,200 degrees Fahrenheit. Collecting continuous (at least once every 15 minutes) and hourly average O₂ monitoring data according to §63.1572; and maintaining the average O₂ concentration at or above 2 volume percent (dry basis).

■ 84. Table 40 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1572(a)(1) and (b)(1), you shall meet each requirement in the following table that applies to you.

TABLE 40 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS OPACITY MONITORING SYSTEMS AND CONTINUOUS EMISSION MONITORING SYSTEMS

This type of continuous opacity or emission monitoring system . . .	Must meet these requirements . . .
1. Continuous opacity monitoring system	Performance specification 1 (40 CFR part 60, appendix B).
2. PM CEMS; this monitor must include an O ₂ monitor for correcting the data for excess air.	The requirements in 40 CFR 60.105a(d).
3. CO continuous emission monitoring system	Performance specification 4 (40 CFR part 60, appendix B); span value of 1,000 ppm; and procedure 1 (40 CFR part 60, appendix F) except relative accuracy test audits are required annually instead of quarterly.
4. CO continuous emission monitoring system used to demonstrate emissions average under 50 ppm (dry basis).	Performance specification 4 (40 CFR part 60, appendix B); and span value of 100 ppm.
5. SO ₂ continuous emission monitoring system for sulfur recovery unit with oxidation control system or reduction control system; this monitor must include an O ₂ monitor for correcting the data for excess air.	Performance specification 2 (40 CFR part 60, appendix B); span value of 500 ppm SO ₂ , or if using Equation 1 of 40 CFR 60.102a(f)(1)(i), span value of two times the limit at the highest O ₂ concentration; use Methods 6 or 6C (40 CFR part 60, appendix A–4) for certifying the SO ₂ monitor and Methods 3A or 3B (40 CFR part 60, appendix A–2) for certifying the O ₂ monitor; and procedure 1 (40 CFR part 60, appendix F) except relative accuracy test audits are required annually instead of quarterly.

TABLE 40 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS OPACITY MONITORING SYSTEMS AND CONTINUOUS EMISSION MONITORING SYSTEMS—Continued

This type of continuous opacity or emission monitoring system . . .	Must meet these requirements . . .
6. Reduced sulfur and O ₂ continuous emission monitoring system for sulfur recovery unit with reduction control system not followed by incineration; this monitor must include an O ₂ monitor for correcting the data for excess air unless exempted.	Performance specification 5 (40 CFR part 60, appendix B), except calibration drift specification is 2.5 percent of the span value instead of 5 percent; span value is 450 ppm reduced sulfur, or if using Equation 1 of 40 CFR 60.102a(f)(1)(i), span value of two times the limit at the highest O ₂ concentration; use Methods 15 or 15A (40 CFR part 60, appendix A–5) for certifying the reduced sulfur monitor and Methods 3A or 3B (40 CFR part 60, appendix A–2) for certifying the O ₂ monitor; if Method 3A or 3B yields O ₂ concentrations below 0.25 percent during the performance evaluation, the O ₂ concentration can be assumed to be zero and the O ₂ monitor is not required; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.
7. Instrument with an air or O ₂ dilution and oxidation system to convert reduced sulfur to SO ₂ for continuously monitoring the concentration of SO ₂ instead of reduced sulfur monitor and O ₂ monitor.	Performance specification 5 (40 CFR part 60, appendix B); span value of 375 ppm SO ₂ or if using Equation 1 of 40 CFR 60.102a(f)(1)(i), span value of two times the limit at the highest O ₂ concentration; use Methods 15 or 15A (40 CFR part 60, appendix A–5) for certifying the reduced sulfur monitor and 3A or 3B (40 CFR part 60, appendix A–2) for certifying the O ₂ monitor; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.
8. TRS continuous emission monitoring system for sulfur recovery unit; this monitor must include an O ₂ monitor for correcting the data for excess air.	Performance specification 5 (40 CFR part 60, appendix B).
9. O ₂ monitor for oxygen concentration	If necessary due to interferences, locate the oxygen sensor prior to the introduction of any outside gas stream; performance specification 3 (40 CFR part 60, appendix B; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.

■ 85. Table 41 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1572(c)(1), you shall meet each requirement in the following table that applies to you.

TABLE 41 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS PARAMETER MONITORING SYSTEMS

If you use . . .	You shall . . .
1. pH strips	Use pH strips with an accuracy of ± 10 percent.
2. pH meter	Locate the pH sensor in a position that provides a representative measurement of pH; ensure the sample is properly mixed and representative of the fluid to be measured. Use a pH sensor with an accuracy of at least ± 0.2 pH units. Check the pH meter's calibration on at least one point at least once daily; check the pH meter's calibration on at least two points at least once quarterly; at least monthly, inspect all components for integrity and all electrical components for continuity; record the results of each calibration check and inspection.
3. Colormetric tube sampling system.	Use a colormetric tube sampling system with a printed numerical scale in ppmv, a standard measurement range of 1 to 10 ppmv (or 1 to 30 ppmv if applicable), and a standard deviation for measured values of no more than ± 15 percent. System must include a gas detection pump and hot air probe if needed for the measurement range.
4. CO ₂ , O ₂ , and CO monitors for coke burn-off rate.	a. Locate the concentration sensor so that it provides a representative measurement of the content of the exit gas stream; ensure the sample is properly mixed and representative of the gas to be measured. Use a sensor with an accuracy of at least ± 1 percent of the range of the sensor or to a nominal gas concentration of ± 0.5 percent, whichever is greater. Use a monitor that is able to measure concentration on a dry basis or is able to correct for moisture content and record on a dry basis. Conduct calibration checks at least annually; conduct calibration checks following any period of more than 24 hours throughout which the sensor reading exceeds the manufacturer's specified maximum operating range or install a new sensor; at least quarterly, inspect all components for integrity and all electrical connections for continuity; record the results of each calibration and inspection. b. As an alternative, the requirements in 40 CFR 60.105a(b)(2) may be used.
5. BLD	Follow the requirements in 40 CFR 60.105a(c).
6. Voltage, secondary current, or total power input sensors.	Use meters with an accuracy of at least ± 5 percent over the operating range.

TABLE 41 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS PARAMETER MONITORING SYSTEMS—Continued

If you use . . .	You shall . . .
7. Pressure/Pressure drop ¹ sensors.	Each time that the unit is not operating, confirm that the meters read zero. Conduct a calibration check at least annually; conduct calibration checks following any period of more than 24 hours throughout which the meter reading exceeds the manufacturer's specified maximum operating range; at least monthly, inspect all components of the continuous parameter monitoring system for integrity and all electrical connections for continuity; record the results of each calibration check and inspection. Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure and minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion. Use a gauge with an accuracy of at least ± 5 percent over the normal operating range or 0.12 kilopascals (0.5 inches of water column), whichever is greater. Review pressure sensor readings at least once a week for straightline (unchanging) pressure and perform corrective action to ensure proper pressure sensor operation if blockage is indicated; using an instrument recommended by the sensor's manufacturer, check gauge calibration and transducer calibration annually; conduct calibration checks following any period of more than 24 hours throughout which the pressure exceeded the manufacturer's specified maximum rated pressure or install a new pressure sensor; at least quarterly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage, unless the CPMS has a redundant pressure sensor; record the results of each calibration check and inspection.
8. Air flow rate, gas flow rate, or total water (or scrubbing liquid) flow rate sensors.	Locate the flow sensor(s) and other necessary equipment (such as straightening vanes) in a position that provides representative flow; reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances. If you elect to comply with Option 3 (Ni lb/hr) or Option 4 (Ni lb/1,000 lb of coke burn-off) for the HAP metal emission limitations in § 63.1564, install the continuous parameter monitoring system for gas flow rate as close as practical to the continuous opacity monitoring system; and if you don't use a continuous opacity monitoring system, install the continuous parameter monitoring system for gas flow rate as close as practical to the control device. Use a flow rate sensor with an accuracy of at least ± 5 percent over the normal range of flow measured, or 1.9 liter per minute (0.5 gallons per minute), whichever is greater, for liquid flow. Use a flow rate sensor with an accuracy of at least ± 5 percent over the normal range of flow measured, or 280 liters per minute (10 cubic feet per minute), whichever is greater, for gas flow. Conduct a flow sensor calibration check at least biennially (every two years); conduct a calibration check following any period of more than 24 hours throughout which the flow rate exceeded the manufacturer's specified maximum rated flow rate or install a new flow sensor; at least quarterly, inspect all components for leakage, unless the CPMS has a redundant flow sensor; record the results of each calibration check and inspection.
9. Temperature sensors.	Locate the temperature sensor in the combustion zone, or in the ductwork immediately downstream of the combustion zone before any substantial heat exchange occurs or in the ductwork immediately downstream of the regenerator; locate the temperature sensor in a position that provides a representative temperature; shield the temperature sensor system from electromagnetic interference and chemical contaminants. Use a temperature sensor with an accuracy of at least ± 1 percent over the normal range of temperature measured, expressed in degrees Celsius (C), or 2.8 degrees C, whichever is greater. Conduct calibration checks at least annually; conduct calibration checks following any period of more than 24 hours throughout which the temperature exceeded the manufacturer's specified maximum rated temperature or install a new temperature sensor; at least quarterly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion, unless the CPMS has a redundant temperature sensor; record the results of each calibration check and inspection.
10. Oxygen content sensors ² .	Locate the oxygen sensor so that it provides a representative measurement of the oxygen content of the exit gas stream; ensure the sample is properly mixed and representative of the gas to be measured. Use an oxygen sensor with an accuracy of at least ± 1 percent of the range of the sensor or to a nominal gas concentration of ± 0.5 percent, whichever is greater. Conduct calibration checks at least annually; conduct calibration checks following any period of more than 24 hours throughout which the sensor reading exceeds the manufacturer's specified maximum operating range or install a new oxygen sensor; at least quarterly, inspect all components for integrity and all electrical connections for continuity; record the results of each calibration and inspection.

¹ Not applicable to non-venturi wet scrubbers of the jet-ejector design.

² This does not replace the requirements for oxygen monitors that are required to use continuous emissions monitoring systems. The requirements in this table apply to oxygen sensors that are continuous parameter monitors, such as those that monitor combustion zone oxygen concentration and regenerator exit oxygen concentration.

■ 86. Table 43 to subpart UUU is revised to read as follows:

As stated in § 63.1575(a), you shall meet each requirement in the following table that applies to you.

TABLE 43 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR REPORTS

You must submit . . .	The report must contain . . .	You shall submit the report . . .
1. A compliance report	If there are no deviations from any emission limitation or work practice standard that applies to you, a statement that there were no deviations from the standards during the reporting period and that no continuous opacity monitoring system or continuous emission monitoring system was inoperative, inactive, out-of-control, repaired, or adjusted; if you have a deviation from any emission limitation or work practice standard during the reporting period, the report must contain the information in § 63.1575(c) through (e).	Semiannually according to the requirements in § 63.1575(b).
2. Performance test and CEMS performance evaluation data.	On and after January 30, 2019, the information specified in § 63.1575(k)(1).	Within 60 days after the date of completing each test according to the requirements in § 63.1575(k).

■ 87. Table 44 to subpart UUU of part 63 is revised to read as follows:

As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.

TABLE 44 TO SUBPART UUU OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes	Except the correct mail drop (MD) number is C404–04.
§ 63.1(a)(5)	[Reserved]	Not applicable	
§ 63.1(a)(6) .....	.....	Yes	
§ 63.1(a)(7)–(9)	[Reserved]	Not applicable	Except that this subpart specifies calendar or operating day.
§ 63.1(a)(10)–(12) .....	.....	Yes	
§ 63.1(b)(1)	Initial Applicability Determination for this part.	Yes	
§ 63.1(b)(2)	[Reserved]	Not applicable	Area sources are not subject to this subpart.
§ 63.1(b)(3) .....	.....	Yes	
§ 63.1(c)(1)	Applicability of this part after a Relevant Standard has been set under this part.	Yes	
§ 63.1(c)(2)		No	§ 63.1579 specifies that if the same term is defined in subparts A and UUU of this part, it shall have the meaning given in this subpart.
§ 63.1(c)(3)–(4)	[Reserved]	Not applicable	
§ 63.1(c)(5) .....	.....	Yes	
§ 63.1(d)	[Reserved]	Not applicable	In § 63.5(b)(4), replace the reference to § 63.9(b) with § 63.9(b)(4) and (5).
§ 63.1(e)	Applicability of Permit Program	Yes	
§ 63.2	Definitions	Yes	
§ 63.3	Units and Abbreviations	Yes	Except this subpart specifies the application is submitted as soon as practicable before startup but not later than 90 days after the promulgation date if construction or reconstruction had commenced and initial startup had not occurred before promulgation.
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes	
§ 63.4(a)(3)–(5)	[Reserved]	Not applicable	
§ 63.4(b)–(c)	Circumvention and Fragmentation	Yes	
§ 63.5(a)	Construction and Reconstruction	Yes	
§ 63.5(b)(1) .....	.....	Yes	
§ 63.5(b)(2)	[Reserved]	Not applicable	
§ 63.5(b)(3)–(4) .....	.....	Yes	
§ 63.5(b)(5)	[Reserved]	Not applicable	
§ 63.5(b)(6)		Yes	
§ 63.5(c)	[Reserved]	Not applicable	
§ 63.5(d)(1)(i)	Application for Approval of Construction or Reconstruction—General Application Requirements.	Yes	

TABLE 44 TO SUBPART UUU OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—
Continued

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.5(d)(1)(ii)		Yes	Except that emission estimates specified in § 63.5(d)(1)(ii)(H) are not required, and § 63.5(d)(1)(ii)(G) and (I) are Reserved and do not apply. This subpart specifies submission of notification of compliance status.
§ 63.5(d)(1)(iii) .....	.....	No	
§ 63.5(d)(2) .....	.....	Yes	
§ 63.5(d)(3) .....	.....	Yes	
§ 63.5(d)(4) .....	.....	Yes	
§ 63.5(e)	Approval of Construction or Reconstruction.	Yes	Except that the cross-reference to § 63.9(b)(2) does not apply.
§ 63.5(f)(1)	Approval of Construction or Reconstruction Based on State Review.	Yes	
§ 63.5(f)(2) .....	.....	Yes	
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes	
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Yes	
§ 63.6(b)(5)		Yes	Except that this subpart specifies different compliance dates for sources.
§ 63.6(b)(6)	[Reserved]	Not applicable	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Yes	
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Yes	
§ 63.6(c)(3)–(4)	[Reserved]	Not applicable	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Yes	See § 63.1570(c) for general duty requirement.
§ 63.6(d)	[Reserved]	Not applicable	
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions	No	
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions as Soon as Possible.	No	
§ 63.6(e)(1)(iii)	Compliance with Standards and Maintenance Requirements.	Yes	
§ 63.6(e)(2)	[Reserved]	Not Applicable	Except the cross-references to § 63.6(f)(1) and (e)(1)(i) are changed to § 63.1570(c).
§ 63.6(e)(3)(i)	Startup, Shutdown, and Malfunction Plan Requirements.	No	
§ 63.6(e)(3)(ii)	[Reserved]	Not applicable	
§ 63.6(e)(3)(iii)–(ix) .....	.....	No	
§ 63.6(f)(1)	SSM Exemption	No	
§ 63.6(f)(2)(i)–(iii)(C)	Compliance with Standards and Maintenance Requirements.	Yes	This subpart specifies methods.
§ 63.6(f)(2)(iii)(D) .....	.....	Yes	
§ 63.6(f)(2)(iv)–(v) .....	.....	Yes	
§ 63.6(f)(3) .....	.....	Yes	
§ 63.6(g)	Alternative Standard	Yes	
§ 63.6(h)(1)	SSM Exemption for Opacity/VE Standards.	No	Applies to Method 22 (40 CFR part 60, appendix A–7) tests.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	No	
§ 63.6(h)(2)(ii)	[Reserved]	Not applicable	
§ 63.6(h)(2)(iii) .....	.....	Yes	
§ 63.6(h)(3)	[Reserved]	Not applicable	
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Yes	Applies to Method 22 (40 CFR part 60, appendix A–7) observations.
§ 63.6(h)(5)	Conducting Opacity/VE Observations	No	
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Yes	
§ 63.6(h)(7)(i)	Report COM Monitoring Data from Performance Test.	Yes	
§ 63.6(h)(7)(ii)	Using COM Instead of Method 9	No	

TABLE 44 TO SUBPART UUU OF PART 63—APPLICABILITY OF NESHA¹ GENERAL PROVISIONS TO SUBPART UUU—
Continued

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.6(h)(7)(iii)	Averaging Time for COM during Performance Test.	Yes	Extension of compliance under § 63.6(i)(4) not applicable to a facility that installs catalytic cracking feed hydrotreating and receives an extended compliance date under § 63.1563(c).
§ 63.6(h)(7)(iv)	COM Requirements	Yes	
§ 63.6(h)(7)(v)	COMS Results and Visual Observations.	Yes	
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Yes	
§ 63.6(h)(9)	Adjusted Opacity Standard	Yes	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes	Except that this subpart specifies the applicable test and demonstration procedures. Except test results must be submitted in the Notification of Compliance Status report due 150 days after the compliance date.
§ 63.6(i)(15)	[Reserved]	Not applicable	
§ 63.6(i)(16)	Presidential Compliance Exemption ..	Yes	
§ 63.6(j)	Performance Test Requirements Applicability.	Yes	
§ 63.7(a)(1)	Performance Test Dates	Yes	
§ 63.7(a)(2)	Section 114 Authority	Yes	Except that this subpart specifies notification at least 30 days prior to the scheduled test date rather than 60 days. Except that when this subpart specifies to use 40 CFR part 60, appendix F, out of control periods are to be defined as specified in part 60, appendix F.
§ 63.7(a)(3)	Force Majeure	Yes	
§ 63.7(a)(4)	Notifications	Yes	
§ 63.7(b)	Quality Assurance Program/Site-Specific Test Plan.	Yes	
§ 63.7(c)	Performance Test Facilities	Yes	
§ 63.7(d)	Performance Testing	No	See § 63.1571(b)(1). Except performance test reports must be submitted with notification of compliance status due 150 days after the compliance date, and § 63.7(g)(2) is reserved and does not apply.
§ 63.7(e)(1)	Conduct of Tests	Yes	
§ 63.7(e)(2)–(4)	Alternative Test Method	Yes	
§ 63.7(f)	Data Analysis, Recordkeeping, Reporting.	Yes	
§ 63.7(g)	Waiver of Tests	Yes	
§ 63.7(h)	Monitoring Requirements-Applicability	Yes	Except that for a flare complying with § 63.670, the cross-reference to § 63.11 in this paragraph does not include § 63.11(b). This subpart specifies the required monitoring locations. See § 63.1570(c).
§ 63.8(a)(1)	Performance Specifications	Yes	
§ 63.8(a)(2)	[Reserved]	Not applicable	
§ 63.8(a)(3)	Monitoring with Flares	Yes	
§ 63.8(a)(4)	Conduct of Monitoring	Yes	
§ 63.8(b)(1)	Multiple Effluents and Multiple Monitoring Systems.	Yes	See § 63.1570(c).
§ 63.8(b)(2)–(3)	Monitoring System Operation and Maintenance.	Yes	
§ 63.8(c)(1)	General Duty to Minimize Emissions and CMS Operation.	No	
§ 63.8(c)(1)(i)	Keep Necessary Parts for CMS	Yes	
§ 63.8(c)(1)(ii)	Requirement to Develop SSM Plan for CMS.	No	
§ 63.8(c)(1)(iii)			

TABLE 44 TO SUBPART UUU OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—
Continued

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes	Except that this subpart specifies that for continuous parameter monitoring systems, operational status verification includes completion of manufacturer written specifications or installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment will monitor accurately.
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	Yes	
§ 63.8(c)(5)	COMS Minimum Procedures	Yes	
§ 63.8(c)(6)	CMS Requirements	Yes	
§ 63.8(c)(7)–(8)	CMS Requirements	Yes	
§ 63.8(d)(1)–(2)	Quality Control Program for CMS	Yes	
§ 63.8(d)(3)	Written Procedures for CMS	No	
§ 63.8(e)	CMS Performance Evaluation	Yes	Except that results are to be submitted as part of the Notification Compliance Status due 150 days after the compliance date.
§ 63.8(f)(1)–(5)	Alternative Monitoring Methods	Yes	Except that this subpart specifies procedures for requesting alternative monitoring systems and alternative parameters.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Yes	Applicable to continuous emission monitoring systems if performance specification requires a relative accuracy test audit.
§ 63.8(g)(1)–(4)	Reduction of Monitoring Data	Yes	Applies to continuous opacity monitoring system or continuous emission monitoring system.
§ 63.8(g)(5)	Data Reduction	No	This subpart specifies requirements.
§ 63.9(a)	Notification Requirements—Applicability.	Yes	Duplicate Notification of Compliance Status report to the Regional Administrator may be required.
§ 63.9(b)(1)–(2)	Initial Notifications	Yes	Except that notification of construction or reconstruction is to be submitted as soon as practicable before start-up but no later than 30 days after the effective date if construction or reconstruction had commenced but startup had not occurred before the effective date.
§ 63.9(b)(3)	[Reserved]	Not applicable	
§ 63.9(b)(4)–(5)	Initial Notification Information	Yes	Except § 63.9(b)(4)(ii)–(iv), which are reserved and do not apply.
§ 63.9(c)	Request for Extension of Compliance	Yes	
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes	
§ 63.9(e)	Notification of Performance Test	Yes	Except that notification is required at least 30 days before test.
§ 63.9(f)	Notification of VE/Opacity Test	Yes	
§ 63.9(g)	Additional Notification Requirements for Sources with Continuous Monitoring Systems.	Yes	
§ 63.9(h)	Notification of Compliance Status	Yes	Except that this subpart specifies the notification is due no later than 150 days after compliance date, and except that the reference to § 63.5(d)(1)(ii)(H) in § 63.9(h)(5) does not apply.
§ 63.9(i)	Adjustment of Deadlines	Yes	
§ 63.9(j)	Change in Previous Information	Yes	
63.10(a)	Recordkeeping and Reporting Applicability.	Yes	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	

TABLE 44 TO SUBPART UUU OF PART 63—APPLICABILITY OF NESHA GENERAL PROVISIONS TO SUBPART UUU—
Continued

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shut-downs.	No	See § 63.1576(a)(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 taken to minimize emissions and correct the failure.
§ 63.10(b)(2)(ii)	Recordkeeping of Malfunctions	No	
§ 63.10(b)(2)(iii)	Maintenance Records	Yes	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	No	
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions	Yes	
§ 63.10(b)(2)(vii)–(xiv)	Other CMS Requirements	Yes	Except § 63.10(c)(2)–(4), which are Reserved and do not apply.
§ 63.10(b)(3)	Recordkeeping for Applicability Determinations..	Yes	
§ 63.10(c)(1)–(6)	Additional Records for Continuous Monitoring Systems.	Yes	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for CMS—Identifying Exceedances and Excess Emissions.	Yes	
§ 63.10(c)(9)	[Reserved]	Not applicable	
§ 63.10(c)(10)	Recording Nature and Cause of Malfunctions.	No	See § 63.1576(a)(2) for malfunctions recordkeeping requirements.
§ 63.10(c)(11)	Recording Corrective Actions	No	
§ 63.10(c)(12)–(14)	Additional CMS Recordkeeping Requirements.	Yes	See § 63.1576(a)(2) for malfunctions recordkeeping requirements.
§ 63.10(c)(15)	Use of SSM Plan	No	
§ 63.10(d)(1)	General Reporting Requirements	Yes	This subpart requires performance test results to be reported as part of the Notification of Compliance Status due 150 days after the compliance date.
§ 63.10(d)(2)	Performance Test Results	No	
§ 63.10(d)(3)	Opacity or VE Observations	Yes	See § 63.1575(d) for CPMS malfunction reporting and § 63.1575(e) for COMS and CEMS malfunction reporting.
§ 63.10(d)(4)	Progress Reports	Yes	
§ 63.10(d)(5)	SSM Reports	No	
§ 63.10(e)(1)–(2)	Additional CMS Reports	Yes	Except that reports of performance evaluations must be submitted in Notification of Compliance Status. This subpart specifies the applicable requirements.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	
§ 63.10(e)(4)	COMS Data Reports	Yes	
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes	
§ 63.11(a)	Control Device and Work Practice Requirements Applicability.	Yes	
§ 63.11(b)	Flares	Yes	Except that flares complying with § 63.670 are not subject to the requirements of § 63.11(b).
§ 63.11(c)–(e)	Alternative Work Practice for Monitoring Equipment for Leaks.	Yes	
§ 63.12	State Authority and Delegations	Yes	
§ 63.13	Addresses	Yes	
§ 63.14	Incorporation by Reference	Yes	
§ 63.15	Availability of Information and Confidentiality.	Yes	
§ 63.16	Performance Track Provisions	Yes	

■ 88. Appendix A to subpart UUU of part 63 is amended by revising the first sentence of section 2.1 and section 7.1.3 to read as follows:

Appendix A to Subpart UUU of Part 63—Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)

* * * * *

2.1 A representative sample of catalyst particles is collected, prepared, and analyzed for analyte concentration using either energy or wavelength dispersive X-ray fluorescent (XRF) spectrometry instrumental analyzers.

* * *

* * * * *

7.1.3 Low-Range Calibration Standard. Concentration equivalent to 1 to 20 percent of the span. The concentration of the low-range calibration standard should be selected so that it is less than either one-fourth of the applicable concentration limit or of the lowest concentration anticipated in the catalyst samples.

* * * * *

■ 89. Appendix A to part 63 is amended by adding Method 325A and Method 325B in numerical order to read as follows:

Appendix A to Part 63—Test Methods Pollutant Measurement Methods From Various Waste Media

* * * * *

Method 325A—Volatile Organic Compounds from Fugitive and Area Sources: Sampler Deployment and VOC Sample Collection

1.0 Scope and Application

1.1 This method describes collection of volatile organic compounds (VOCs) at or inside a facility property boundary or from fugitive and area emission sources using passive (diffusive) tube samplers (PS). The concentration of airborne VOCs at or near these potential fugitive- or area-emission sources may be determined using this method in combination with Method 325B. Companion Method 325B (Sampler Preparation and Analysis) describes preparation of sampling tubes, shipment and storage of exposed sampling tubes, and analysis of sampling tubes collected using either this passive sampling procedure or alternative active (pumped) sampling methods.

1.2 This method may be used to determine the average concentration of the select VOCs using the corresponding uptake rates listed in Method 325B, Table 12.1. Additional compounds or alternative sorbents must be evaluated as described in Addendum A of Method 325B or by one of the following national/international standard methods: ISO 16017-2:2003(E), ASTM D6196-03 (Reapproved 2009), or BS EN 14662-4:2005 (all incorporated by reference—see § 63.14), or reported in the peer-reviewed open literature.

1.3 Methods 325A and 325B are valid for the measurement of benzene. Supporting

literature (References 1–8) indicates that benzene can be measured by flame ionization detection or mass spectrometry over a concentration range of approximately 0.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to at least $500 \mu\text{g}/\text{m}^3$ when industry standard ($3.5 \text{ inch long} \times 0.25 \text{ inch outside diameter (o.d.)} \times 5 \text{ mm inner diameter (i.d.)}$) inert-coated stainless steel sorbent tubes packed with Carbograph™ 1 TD, Carbopack™ B, or Carbopack™ X or equivalent are used and when samples are accumulated over a period of 14 days.

1.4 This method may be applied to screening average airborne VOC concentrations at facility property boundaries or monitoring perimeters over an extended period of time using multiple sampling periods (e.g., 26×14 -day sampling periods). The duration of each sampling period is normally 14 days.

1.5 This method requires the collection of local meteorological data (wind speed and direction, temperature, and barometric pressure). Although local meteorology is a component of this method, non-regulatory applications of this method may use regional meteorological data. Such applications risk that the results may not identify the precise source of the emissions.

2.0 Summary of the Method

2.1 Principle of the Method

The diffusive passive sampler collects VOC from air for a measured time period at a rate that is proportional to the concentration of vapor in the air at that location.

2.1.1 This method describes the deployment of prepared passive samplers, including determination of the number of passive samplers needed for each survey and placement of samplers along or inside the facility property boundary depending on the size and shape of the site or linear length of the boundary.

2.1.2 The rate of sampling is specific to each compound and depends on the diffusion constants of that VOC and the sampler dimensions/characteristics as determined by prior calibration in a standard atmosphere (Reference 1).

2.1.3 The gaseous VOC target compounds migrate through a constant diffusion barrier (e.g., an air gap of fixed dimensions) at the sampling end of the diffusion sampling tube and adsorb onto the sorbent.

2.1.4 Heat and a flow of inert carrier gas are then used to extract (desorb) the retained VOCs back from the sampling end of the tube and transport/transfer them to a gas chromatograph (GC) equipped with a chromatographic column to separate the VOCs and a detector to determine the quantity of target VOCs.

2.1.5 Gaseous or liquid calibration standards loaded onto the sampling ends of clean sorbent tubes must be used to calibrate the analytical equipment.

2.1.6 This method requires the use of field blanks to ensure sample integrity associated with shipment, collection, and storage of the passive samples. It also requires the use of field duplicates to validate the sampling process.

2.1.7 At the end of each sampling period, the passive samples are collected, sealed, and

shipped to a laboratory for analysis of target VOCs by thermal desorption gas chromatography, as described in Method 325B.

2.2 Application of Diffusive Sampling

2.2.1 This method requires deployment of passive sampling tubes on a monitoring perimeter encompassing all known emission sources at a facility and collection of local meteorological data. It may be used to determine average concentration of VOC at a facility's "fenceline" using time integrated passive sampling (Reference 2).

2.2.2 Collecting samples and meteorological data at progressively higher frequencies may be employed to resolve shorter term concentration fluctuations and wind conditions that could introduce interfering emissions from other sources.

2.2.3 This passive sampling method provides a low cost approach to screening of fugitive or area emissions compared to active sampling methods that are based on pumped sorbent tubes or time weighted average canister sampling.

2.2.3.1 Additional passive sampling tubes may be deployed at different distances from the facility property boundary or from the geometric center of the fugitive emission source.

2.2.3.2 Additional meteorological measurements may also be collected as needed to perform preliminary gradient-based assessment of the extent of the pollution plume at ground level and the effect of "background" sources contributing to airborne VOC concentrations at the location.

2.2.4 Time-resolved concentration measurements coupled with time-resolved meteorological monitoring may be used to generate data needed for source apportionment procedures and mass flux calculations.

3.0 Definitions

(See also Section 3.0 of Method 325B.)

3.1 *Fenceline* means the property boundary of a facility or internal monitoring perimeter established in accordance with the requirements in Section 8.2 of this method.

3.2 *Passive sampler (PS)* means a specific type of sorbent tube (defined in this method) that has a fixed dimension air (diffusion) gap at the sampling end and is sealed at the other end.

3.3 *Passive sampling* refers to the activity of quantitatively collecting VOC on sorbent tubes using the process of diffusion.

3.4 PS_i is the annual average for all PS concentration results from location i .

3.5 $PS_{i,j}$ is the set of annual average concentration results for PS_i and two sorbent tubes nearest to the PS location i .

3.6 PS_{ip} is the concentration from the sorbent tube at location i for the test period or episode p .

3.7 *Sampling period* is the length of time each passive sampler is exposed during field monitoring. The sampling period for this method is 14 days.

3.8 *Sorbent tube* (Also referred to as tube, PS tube, adsorbent tube, and sampling tube) is an inert coated stainless steel tube. Standard PS tube dimensions for this method

are 3.5-inch (89 mm) long $\times$ 0.25-inch (6.4 mm) o.d. with an i.d. of 5 mm, a cross-sectional area of 19.6 mm² and an air gap of 15 mm. The central portion of the tube is packed with solid adsorbent material contained between 2 $\times$ 100-mesh stainless steel gauzes and terminated with a diffusion cap at the sampling end of the tube. These axial passive samplers are installed under a protective hood during field deployment.

Note: Glass and glass- (or fused silica-) lined stainless steel sorbent tubes (typically 4 mm i.d.) are also available in various lengths to suit different makes of thermal desorption equipment, but these are rarely used for passive sampling because it is more difficult to adequately define the diffusive air gap in glass or glass-line tubing. Such tubes are not recommended for this method.

4.0 Sampling Interferences

4.1 General Interferences

Passive tube samplers should be sited at a distance beyond the influence of possible obstructions such as trees, walls, or buildings at the monitoring site. Complex topography and physical site obstructions, such as bodies of water, hills, buildings, and other structures that may prevent access to a planned PS location must be taken into consideration. You must document and report siting interference with the results of this method.

4.2 Background Interference

Nearby or upwind sources of target emissions outside the facility being tested can contribute to background concentrations. Moreover, because passive samplers measure continuously, changes in wind direction can cause variation in the level of background concentrations from interfering sources during the monitoring period. This is why local meteorological information, particularly wind direction and speed, is required to be collected throughout the monitoring period. Interfering sources can include neighboring industrial facilities, transportation facilities, fueling operations, combustion sources, short-term transient sources, residential sources, and nearby highways or roads. As PS data are evaluated, the location of potential interferences with respect to PS locations and local wind conditions should be considered, especially when high PS concentration values are observed.

4.3 Tube Handling

You must protect the PS tubes from gross external contamination during field

sampling. Analytical thermal desorption equipment used to analyze PS tubes must desorb organic compounds from the interior of PS tubes and exclude contamination from external sampler surfaces in the analytical/sample flow path. If the analytical equipment does not comply with this requirement, you must wear clean, white, cotton or powder-free nitrile gloves to handle sampling tubes to prevent contamination of the external sampler surfaces. Sampling tubes must be capped with two-piece, brass, 0.25 inch, long-term storage caps fitted with combined polytetrafluoroethylene ferrules (see Section 6.1 and Method 325B) to prevent ingress of airborne contaminants outside the sampling period. When not being used for field monitoring, the capped tubes must be stored in a clean, air-tight, shipping container to prevent the collection of VOCs (see Section 6.4.2 of Method 325B).

4.4 Local Weather Conditions and Airborne Particulates

Although air speeds are a constraint for many forms of passive samplers, axial tube PS devices have such a slow inherent uptake rate that they are largely immune to these effects (References 4,5). Passive samplers must nevertheless be deployed under non-emitting weatherproof hoods to moderate the effect of local weather conditions such as solar heating and rain. The cover must not impede the ingress of ambient air. Sampling tubes should also be orientated vertically and pointing downwards, to minimize accumulation of particulates.

4.5 Temperature

The normal working range for field sampling for sorbent packing is 0–40 °C (References 6,7). Note that most published passive uptake rate data for sorbent tubes is quoted at 20 °C. Note also that, as a rough guide, an increase in temperature of 10 °C will reduce the collection capacity for a given analyte on a given sorbent packing by a factor of 2, but the uptake rate will not change significantly (Reference 4).

5.0 Safety

This method does not purport to include all safety issues or procedures needed when deploying or collecting passive sampling tubes. Precautions typical of field air sampling projects are required. Tripping, falling, electrical, and weather safety considerations must all be included in plans to deploy and collect passive sampling tubes.

6.0 Sampling Equipment and Supplies, and Pre-Deployment Planning

This section describes the equipment and supplies needed to deploy passive sampling monitoring equipment at a facility property boundary. Details of the passive sampling tubes themselves and equipment required for subsequent analysis are described in Method 325B.

6.1 Passive Sampling Tubes

The industry standard PS tubes used in this method must meet the specific configuration and preparation requirements described in Section 3.0 of this method and Section 6.1 of Method 325B.

Note: The use of PS tubes packed with various sorbent materials for monitoring a wide variety of organic compounds in ambient air has been documented in the literature (References 4–10). Other sorbents may be used in standard passive sampling tubes for monitoring additional target compound(s) once their uptake rate and performance has been demonstrated following procedures in Addendum A to Method 325B. Guidance on sorbent selection can also be obtained from relevant national and international standard methods such as ASTM D6196–03 (Reapproved 2009) (Reference 14) and ISO 16017–2:2003(E) (Reference 13) (both incorporated by reference—see § 63.14).

6.2 Passive or Diffusive Sampling Cap

One diffusive sampling cap is required per PS tube. The cap fits onto the sampling end of the tube during air monitoring. The other end of the tube remains sealed with the long-term storage cap. Each diffusive sampling cap is fitted with a stainless steel gauze, which defines the outer limit of the diffusion air gap.

6.3 Sorbent Tube Protection Cover

A simple weatherproof hood, suitable for protecting passive sampling tubes from the worst of the weather (see Section 4.4) consists of an inverted cone/funnel constructed of an inert, non-outgassing material that fits over the diffusive tube, with the open (sampling) end of the tube projecting just below the cone opening. An example is shown in Figure 6.1 (Adapted from Reference 13).

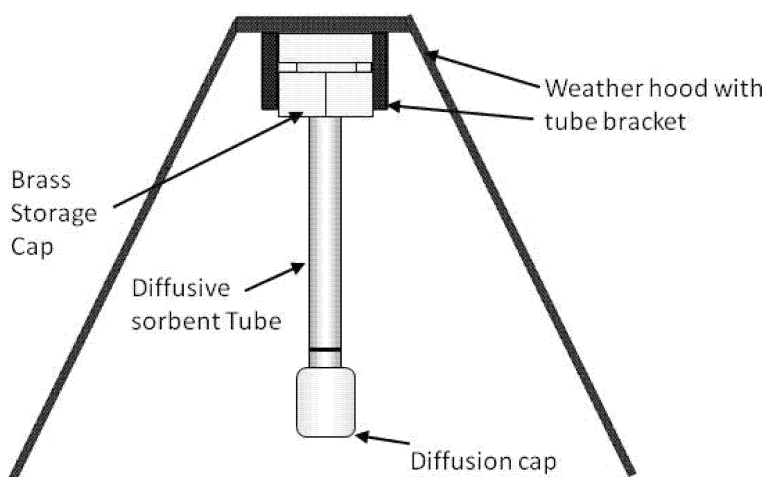


Figure 6.1. PS Tube with Weather Protector

6.4 Thermal Desorption Apparatus

If the analytical thermal desorber that will subsequently be used to analyze the passive sampling tubes does not meet the requirement to exclude outer surface contaminants from the sample flow path (see Section 6.6 of Method 325B), then clean, white, cotton or powder-free nitrile gloves must be used for handling the passive sampling tubes during field deployment.

6.5 Sorbent Selection

Sorbent tube configurations, sorbents or other VOC not listed in this method must be evaluated according to Method 325B, Addendum A or ISO 16017-2:2003(E) (Reference 13) (incorporated by reference—see § 63.14). The supporting evaluation and verification data described in Method 325B, Addendum A for configurations or compounds different from the ones described in this method must meet the performance requirements of Method 325A/B and must be submitted with the test plan for your measurement program.

7.0 Reagents and Standards

No reagents or standards are needed for the field deployment and collection of passive sampling tubes. Specifications for sorbents, gas and liquid phase standards, preloaded standard tubes, and carrier gases are covered in Section 7 of Method 325B.

8.0 Sample Deployment, Recovery, and Storage

Pre-deployment and planning steps are required before field deployment of passive sampling tubes. These activities include but are not limited to conducting a site visit, determining suitable and required monitoring locations, and determining the monitoring frequency to be used.

8.1 Conducting the Site Visit

8.1.1 Determine the size and shape of the facility footprint in order to determine the required number of monitoring locations.

8.1.2 Identify obstacles or obstructions (buildings, roads, fences), hills and other terrain issues (e.g., bodies of water or swamp land) that could interfere with air parcel flow to the sampler or that prevent reasonable access to the location. You may use the general guidance in Section 4.1 of this method during the site visit to identify sampling locations. You must evaluate the placement of each passive sampler to determine if the conditions in this section are met.

8.1.3 Identify to the extent possible and record potential off-site source interferences (e.g., neighboring industrial facilities, transportation facilities, fueling operations, combustion sources, short-term transient sources, residential sources, nearby highways).

8.1.4 Identify the closest available meteorological station. Identify potential locations for one or more on-site or near-site meteorological station(s) following the guidance in EPA-454/B-08-002 (Reference 11) (incorporated by reference—see § 63.14).

8.2 Determining Sampling Locations (References 2, 3)

8.2.1 The number and placement of the passive samplers depends on the size, the shape of the facility footprint or the linear distance around the facility, and the proximity of emission sources near the property boundaries. Aerial photographs or site maps may be used to determine the size (acreage) and shape of the facility or the length of the monitoring perimeter. Place passive samplers on an internal monitoring perimeter on or inside the facility boundary encompassing all emission sources at the facility at different angles circling the

geometric center of the facility or at different distances based on the monitoring perimeter length of the facility.

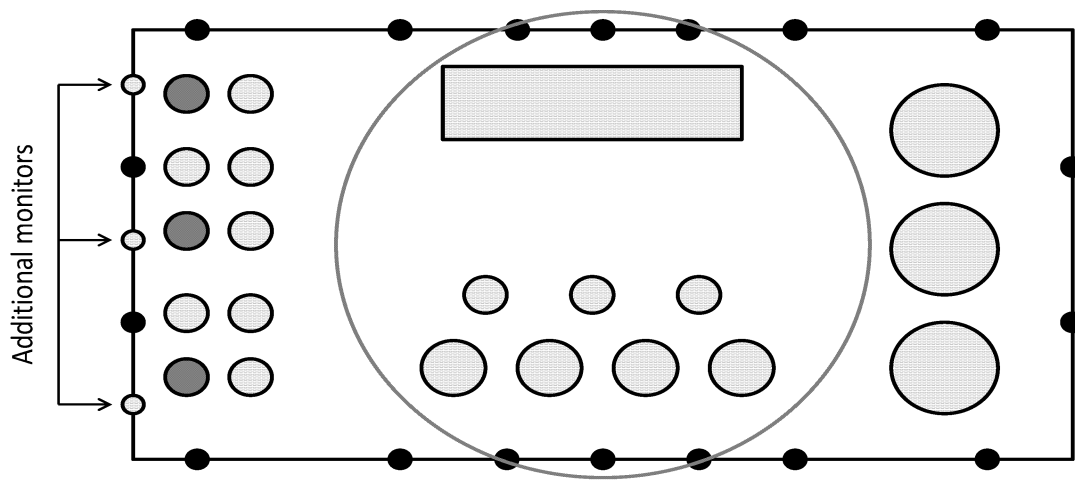
Note: In some instances, permanent air monitoring stations may already be located in close proximity to the facility. These stations may be operated and maintained by the site, or local or state regulatory agencies. If access to the station is possible, a PS may be deployed adjacent to other air monitoring instrumentation. A comparison of the pollutant concentrations measured with the PS to concentrations measured by site instrumentation may be used as an optional data quality indicator to assess the accuracy of PS results.

8.2.1.1 The monitoring perimeter may be located between the property boundary and any potential emission source near the property boundary, as long as the distance from the source to the monitoring perimeter is at least 50 meters (162 feet). If a potential emissions source is within 50 meters (162 feet) of the property boundary, the property boundary shall be used as the monitoring perimeter near that source.

8.2.1.2 Samplers need only be placed around the monitoring perimeter and not along internal roads or other right of ways that may bisect the facility.

8.2.1.3 Extra samplers must be placed near known sources of VOCs if the potential emission source is within 50 meters (162 feet) of the boundary and the source location is between two monitors. Measure the distance (x) between the two monitors and place another monitor halfway between (x/2) the two monitors. For example, in Figure 8.1, the facility added three additional monitors (i.e., light shaded sampler locations) and in Figure 8.2, the facility added two additional monitors to provide sufficient coverage of all area sources.

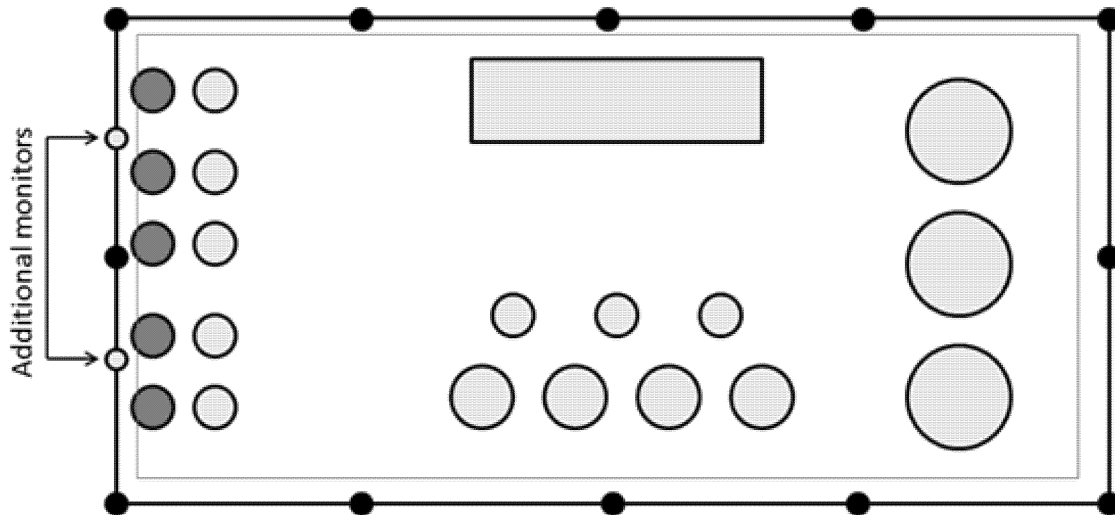
BILLING CODE 6560-50-P



Refinery (20% Angle)

Note: Shaded sources are within 50 meters of the property boundary and are located between two monitors. Additional coverage required by this method was accomplished by placing the monitors halfway between two existing monitors.

Figure 8.1. Facility with a Regular Shape Between 750 and 1,500 Acres in Area



Refinery (24,000 Feet Perimeter)

Note: Shaded sources are within 50 meters of the property boundary and are located between two monitors. Additional coverage required by this method was accomplished by placing the monitors halfway between two existing monitors.

Figure 8.2. Facility with a Boundary Length of 24,000 feet

8.2.2 Option 1 for Determining Sampling Locations.

8.2.2.1 For facilities with a regular (circular, triangular, rectangular, or square)

shape, determine the geographic center of the facility.

8.2.2.1.1 For facilities with an area of less than or equal to 750 acres, measure angles of 30 degrees from the center point for a total of twelve 30 degree measurements evenly spaced (± 1 degree).

8.2.2.1.2 For facilities covering an area greater than 750 acres but less than or equal to 1,500 acres, measure angles of 20 degrees from the center point for a total of eighteen 20 degree measurements evenly spaced (± 1 degree). Figure 8.1 shows the monitor placement around the property boundary of a facility with an area between 750 and 1,500

acres. Monitor placements are represented with black dots along the property boundary.

8.2.2.1.3 For facilities covering an area greater than 1,500 acres, measure angles of 15 degrees from the center point for a total of twenty-four 15 degree measurements evenly spaced (± 1 degree).

8.2.2.1.4 Locate each sampling point where the measured angle intersects the outer monitoring perimeter.

8.2.2.2 For irregularly shaped facilities, divide the area into a set of connecting subarea circles, triangles or rectangles to

determine sampling locations. The subareas must be defined such that a circle can reasonably encompass the subarea. Then determine the geometric center point of each of the subareas.

8.2.2.2.1 If a subarea is less than or equal to 750 acres (e.g., Figure 8.3), measure angles of 30 degrees from the center point for a total of twelve 30 degree measurements (± 1 degree).

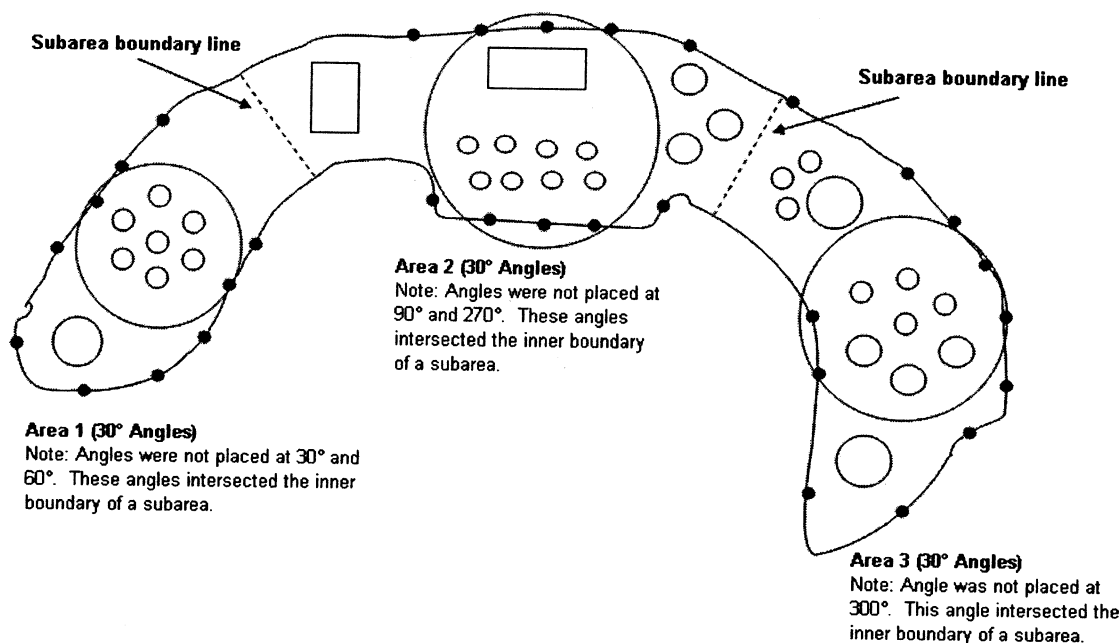


Figure 8.3. Facility Divided into Three Subareas

8.2.2.2.2 If a subarea is greater than 750 acres but less than or equal to 1,500 acres (e.g., Figure 8.4), measure angles of 20 degrees from the center point for a total of eighteen 20 degree measurements (± 1 degree).

8.2.2.2.3 If a subarea is greater than 1,500 acres, measure angles of 15 degrees from the

center for a total of twenty-four 15 degree measurements (± 1 degree).

8.2.2.2.4 Locate each sampling point where the measured angle intersects the outer monitoring perimeter. Sampling points need not be placed closer than 152 meters (500 feet) apart (or 76 meters (250 feet) if known sources are within 50 meters (162

feet) of the monitoring perimeter), as long as a minimum of 3 monitoring locations are used for each subarea.

8.2.2.2.5 Sampling sites are not needed at the intersection of an inner boundary with an adjacent subarea. The sampling location must be sited where the measured angle intersects the subarea's outer monitoring perimeter.

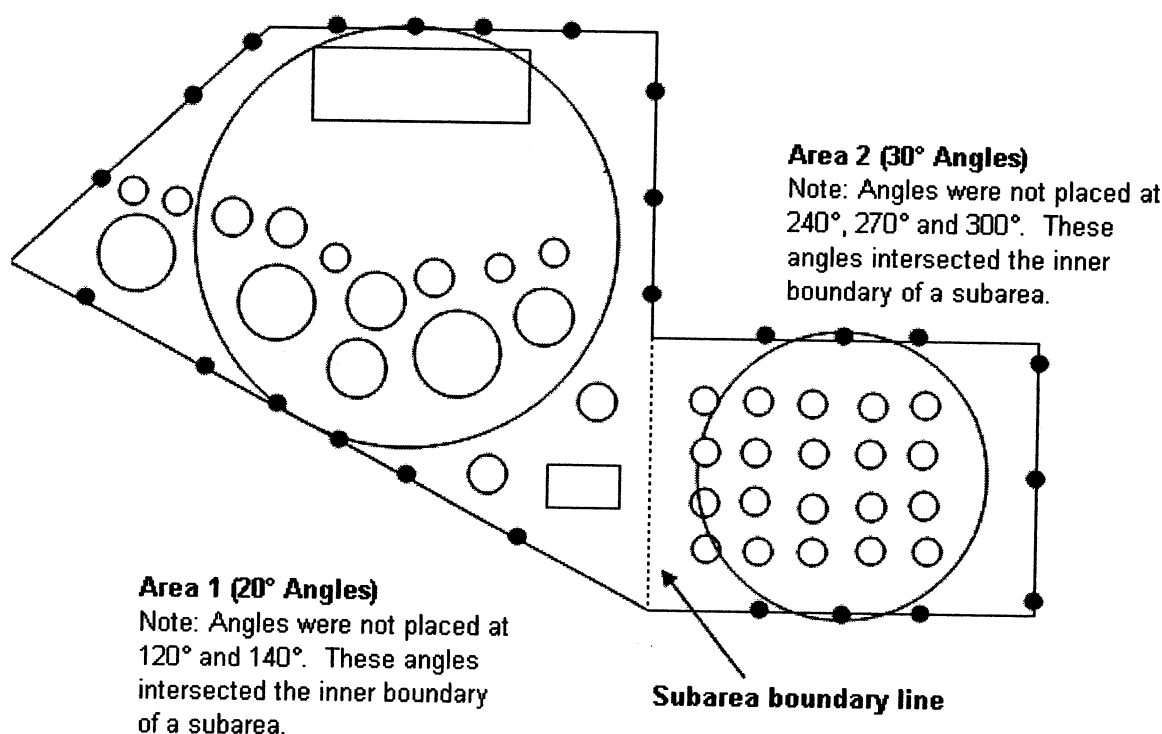


Figure 8.4. Facility Divided into Two Subareas

8.2.3 Option 2 for Determining Sampling Locations.

8.2.3.1 For facilities with a monitoring perimeter length of less than 7,315 meters (24,000 feet), a minimum of twelve sampling locations evenly spaced ± 10 percent of the location interval is required.

8.2.3.2 For facilities with a monitoring perimeter length greater than 7,315 meters (24,000 feet), sampling locations are spaced 610 ± 76 meters ($2,000 \pm 250$ feet) apart.

8.3 Siting a Meteorological Station

A meteorological station is required at or near the facility you are monitoring. A number of commercially available meteorological stations can be used. Information on meteorological instruments can be found in EPA-454/R-99-005 (Reference 11) (incorporated by reference—see § 63.14). Some important considerations for siting of meteorological stations are detailed below.

8.3.1 Place meteorological stations in locations that represent conditions affecting the transport and dispersion of pollutants in the area of interest. Complex terrain may require the use of more than one meteorological station.

8.3.2 Deploy wind instruments over level, open terrain at a height of 10 meters (33 feet). If possible, locate wind instruments at a distance away from nearby structures that is equal to at least 10 times the height of the structure.

8.3.3 Protect meteorological instruments from thermal radiation and adequately ventilate them using aspirated shields. The temperature sensor must be located at a distance away from any nearby structures that is equal to at least four times the height

of the structure. Temperature sensors must be located at least 30 meters (98 feet) from large paved areas.

8.3.4 Collect and record meteorological data, including wind speed, wind direction, temperature and barometric pressure on an hourly basis. Calculate average unit vector wind direction, sigma theta, temperature and barometric pressure per sampling period to enable calculation of concentrations at standard conditions. Supply this information to the laboratory.

8.3.5 Identify and record the location of the meteorological station by its GPS coordinate.

8.4 Monitoring Frequency

8.4.1 Sample collection may be performed for periods up to 14 days.

8.4.2 A site screening protocol that meets method requirements may be performed by collecting samples for a year where each PS accumulates VOC for a 14-day sampling period. Study results are accumulated for the sampling periods (typically 26) over the course of one calendar year. To the extent practical, sampling tubes should be changed at approximately the same time of day at each of the monitoring sites.

8.5 Passive Sampler Deployment

8.5.1 Clean (conditioned) sorbent tubes must be prepared and packaged by the laboratory as described in Method 325B and must be deployed for sampling within 30 days of conditioning.

8.5.2 Allow the tubes to equilibrate with ambient temperature (approximately 30 minutes to 1 hour) at the monitoring location before removing them from their storage/shipping container for sample collection.

8.5.3 If there is any risk that the analytical equipment will not meet the requirement to exclude contamination on outer tube surfaces from the sample flow path (see Section 6.6 of Method 325B), sample handlers must wear clean, white, cotton or powder-free nitrile gloves during PS deployment and collection and throughout any other tube handling operations.

8.5.4 Inspect the sampling tubes immediately prior to deployment. Ensure that they are intact, securely capped, and in good condition. Any suspect tubes (e.g., tubes that appear to have leaked sorbent) should be removed from the sampling set.

8.5.5 Secure passive samplers so the bottom of the diffusive sampling cap is 1.5 to 3 meters (4.9 to 9.8 feet) above ground using a pole or other secure structure at each sampling location. Orient the PS vertically and with the sampling end pointing downward to avoid ingress of particulates.

Note: Duplicate sampling assemblies must be deployed in at least one monitoring location for every 10 monitoring locations during each field monitoring period.

8.5.6 Protect the PS from rain and excessive wind velocity by placing them under the type of protective hood described in Section 6.1.3 or equivalent.

8.5.7 Remove the storage cap on the sampling end of the tube and replace it with a diffusive sampling cap at the start of the sampling period. Make sure the diffusion cap is properly seated and store the removed storage caps in the empty tube shipping container.

8.5.8 Record the start time and location details for each sampler on the field sample data sheet (see example in Section 17.0.).

8.5.9 Expose the sampling tubes for the required sampling period—normally 14-days.

8.5.10 Field blank tubes (see Section 9.3 of Method 325B) are stored outside the shipping container at representative sampling locations around the site, but with both long-term storage caps kept in place throughout the monitoring exercise. Collect at least two field blanks sorbent samples per sampling period to ensure sample integrity associated with shipment, collection, and storage.

8.6 Sorbent Tube Recovery and Meteorological Data Collection

Recover deployed sampling tubes and field blanks as follows:

8.6.1 After the sampling period is complete, immediately replace the diffusion end cap on each sampled tube with a long-term storage end cap. Tighten the seal securely by hand and then tighten an additional quarter turn with an appropriate tool. Record the stop date and time and any additional relevant information on the sample data sheet.

8.6.2 Place the sampled tubes, together with the field blanks, in the storage/shipping container. Label the storage container, but do not use paints, markers, or adhesive labels to identify the tubes. TD-compatible electronic (radio frequency identification (RFID)) tube labels are available commercially and are compatible with some brands of thermal desorber. If used, these may be programmed with relevant tube and sample information, which can be read and automatically transcribed into the sequence report by the TD system.

Note: Sampled tubes must not be placed in the same shipping container as clean conditioned sampling tubes.

8.6.3 Sampled tubes may be shipped at ambient temperature to a laboratory for sample analysis.

8.6.4 Specify whether the tubes are field blanks or were used for sampling and document relevant information for each tube using a Chain of Custody form (see example in Section 17.0) that accompanies the samples from preparation of the tubes through receipt for analysis, including the

following information: Unique tube identification numbers for each sampled tube; the date, time, and location code for each PS placement; the date, time, and location code for each PS recovery; the GPS reference for each sampling location; the unique identification number of the duplicate sample (if applicable); and problems or anomalies encountered.

8.6.5 If the sorbent tubes are supplied with electronic (e.g., RFID) tags, it is also possible to allocate a sample identifier to each PS tube. In this case, the recommended format for the identification number of each sampled tube is AA-BB-CC-DD-VOC, where:

AA = Sequence number of placement on route (01, 02, 03 . . .)

BB = Sampling location code (01, 02, 03 . . .)

CC = 14-day sample period number (01 to 26)

DD = Sample code (SA = sample, DU = duplicate, FB = field blank)

VOC = 3-letter code for target compound(s) (e.g., BNZ for benzene or BTX for benzene, toluene, and xylenes)

Note: Sampling start and end times/dates can also be logged using RFID tube tags.

9.0 Quality Control

9.1 Most quality control checks are carried out by the laboratory and associated requirements are in Section 9.0 of Method 325B, including requirements for laboratory blanks, field blanks, and duplicate samples.

9.2 Evaluate for potential outliers the laboratory results for neighboring sampling tubes collected over the same time period. A potential outlier is a result for which one or more PS tube does not agree with the trend in results shown by neighboring PS tubes—particularly when data from those locations have been more consistent during previous sampling periods. Accidental contamination by the sample handler must be documented before any result can be eliminated as an outlier. Rare but possible examples of contamination include loose or missing storage caps or contaminated storage/shipping containers. Review data from the same and neighboring monitoring locations

for the subsequent sampling periods. If the anomalous result is not repeated for that monitoring location, the episode can be ascribed to transient contamination and the data in question must be flagged for potential elimination from the dataset.

9.3 Duplicates and Field Blanks

9.3.1 Collect at least one co-located/duplicate sample for every 10 field samples to determine precision of the measurements.

9.3.2 Collect at least two field blanks sorbent samples per sampling period to ensure sample integrity associated with shipment, collection, and storage. You must use the entire sampling apparatus for field blanks including unopened sorbent tubes mounted in protective sampling hoods. The tube closures must not be removed. Field blanks must be placed in two different quadrants (e.g., 90° and 270°) and remain at the sampling location for the sampling period.

10.0 Calibration and Standardization

Follow the calibration and standardization procedures for meteorological measurements in EPA-454/B-08-002 March 2008 (Reference 11) (incorporated by reference—see § 63.14). Refer to Method 325B for calibration and standardization procedures for analysis of the passive sampling tubes.

11.0 Analytical Procedures

Refer to Method 325B, which provides details for the preparation and analysis of sampled passive monitoring tubes (preparation of sampling tubes, shipment and storage of exposed sampling tubes, and analysis of sampling tubes).

12.0 Data Analysis, Calculations and Documentation

12.1 Calculate Annual Average Fenceline Concentration.

After a year's worth of sampling at the facility fenceline (for example, 26 14-day samples), the average (PS_i) may be calculated for any specified period at each PS location using Equation 12.1.

$$PS_i = \frac{\sum PS_{ip}}{N} \quad \text{Eq. 12.1}$$

Where:

PS_i = Annual average for location i .

PS_{ip} = Sampling period specific concentration from Method 325B.

i = Location of passive sampler (0 to 360°).

p = The sampling period.

N = The number of sampling periods in the year (e.g., for 14-day sampling periods, from 1 to 26).

Note: PS_{ip} is a function of sampling location-specific factors such as the contribution from facility sources, unusual localized meteorological conditions, contribution from nearby interfering sources, the background caused by integrated far-field sources and measurement error due to

deployment, handling, siting, or analytical errors.

12.2 Identify Sampling Locations of Interest

If data from neighboring sampling locations are significantly different, then you may add extra sampling points to isolate background contributions or identify facility-specific “hot spots.”

12.3 Evaluate Trends

You may evaluate trends and patterns in the PS data over multiple sampling periods to determine if elevated concentrations of target compounds are due to operations on

the facility or if contributions from background sources are significant.

12.3.1 Obtain meteorological data including wind speed and wind direction or unit vector wind data from the on-site meteorological station. Use this meteorological data to determine the prevailing wind direction and speed during the periods of elevated concentrations.

12.3.2 As an option you may perform preliminary back trajectory calculations (<http://ready.arl.noaa.gov/HYSPLIT.php>) to aid in identifying the source of the background contribution to elevated target compound concentrations.

12.3.3 Information on published or documented events on- and off-site may also be included in the associated sampling period report to explain elevated concentrations if relevant. For example, you would describe if there was a chemical spill on site, or an accident on an adjacent road.

12.3.4 Additional monitoring for shorter periods (See section 8.4) may be necessary to allow better discrimination/resolution of contributing emission sources if the measured trends and associated meteorology do not provide a clear assessment of facility contribution to the measured fence line concentration.

12.3.5 Additional records necessary to calculate sampling period average target compound concentration can be found in Section 12.1 of Method 325B.

13.0 Method Performance

Method performance requirements are described in Method 325B.

14.0 Pollution Prevention

[Reserved]

15.0 Waste Management

[Reserved]

16.0 References

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13. ISO 16017–2:2003(E), Indoor, ambient and workplace air—Sampling and analysis of volatile organic compounds by sorbent tube/thermal desorption/capillary gas chromatography. Part 2: Diffusive sampling.
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17.0 Tables, Diagrams, Flowcharts and Validation Data

Method 325 A/B**EXAMPLE FIELD TEST DATA SHEET (FTDS)
AND
CHAIN OF CUSTODY****I. GENERAL INFORMATION**

SITE NAME: _____

SITE LOCATION ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

II. SAMPLING DATA

Sample ID (Tube) #	Sorbent	Sample or blank	Start Date	Start Time	Stop Date	Stop Time	Location (gps)	Ambient Temp. (°F)	Barometric Pressure (in. Hg)

III. CUSTODY INFORMATION

COLLECTED BY: _____

Relinquished to Shipper -

Name: _____ Date: _____ Time: _____

Received by Laboratory -

Name: _____ Date: _____ Time: _____

Sample condition upon receipt: _____

Analysis Required: _____

Comments: _____

Figure 17.1. Example Field Data Form and Chain of Custody

Method 325B—Volatile Organic Compounds from Fugitive and Area Sources:

Sampler Preparation and Analysis

1.0 Scope and Application

1.1 This method describes thermal desorption/gas chromatography (TD/GC) analysis of volatile organic compounds (VOCs) from fugitive and area emission sources collected onto sorbent tubes using passive sampling. It could also be applied to the TD/GC analysis of VOCs collected using active (pumped) sampling onto sorbent tubes. The concentration of airborne VOCs at or near potential fugitive- or area-emission sources may be determined using this method in combination with Method 325A. Companion Method 325A (Sampler Deployment and VOC Sample Collection) describes procedures for deploying the sorbent tubes and passively collecting VOCs.

1.2 The preferred GC detector for this method is a mass spectrometer (MS), but flame ionization detectors (FID) may also be used. Other conventional GC detectors such as electron capture (ECD), photoionization (PID), or flame photometric (FPD) may also be used if they are selective and sensitive to the target compound(s) and if they meet the method performance criteria provided in this method.

1.3 There are 97 VOCs listed as hazardous air pollutants in Title III of the Clean Air Act Amendments of 1990. Many of these VOC are candidate compounds for this method. Compounds with known uptake rates for Carbograph™ 1 TD, Carboxpack™ B, or Carboxpack™ X are listed in Table 12.1. This method provides performance criteria to demonstrate acceptable performance of the method (or modifications of the method) for monitoring one or more of the compounds listed Table 12.1. If standard passive sampling tubes are packed with other sorbents or used for other analytes than those listed in Table 12.1, then method performance and relevant uptake rates should be verified according to Addendum A to this method or by one of the following national/international standard methods: ISO 16017-2:2003(E), ASTM D6196-03 (Reapproved 2009), or BS EN 14662-4:2005 (all incorporated by reference—see § 63.14), or reported in the peer-reviewed open literature.

1.4 The analytical approach using TD/GC/MS is based on previously published EPA guidance in Compendium Method TO-17 (<http://www.epa.gov/ttnamti1/airtox.html#compendium>) (Reference 1), which describes active (pumped) sampling of VOCs from ambient air onto tubes packed with thermally stable adsorbents.

1.5 Inorganic gases not suitable for analysis by this method include oxides of carbon, nitrogen and sulfur, ozone (O₃), and other diatomic permanent gases. Other pollutants not suitable for this analysis method include particulate pollutants, (*i.e.*, fumes, aerosols, and dusts), compounds too labile (reactive) for conventional GC analysis, and VOCs that are more volatile than propane.

2.0 Summary of Method

2.1 This method provides procedures for the preparation, conditioning, blanking, and

shipping of sorbent tubes prior to sample collection.

2.2 Laboratory and field personnel must have experience of sampling trace-level VOCs using sorbent tubes (References 2,5) and must have experience operating thermal desorption/GC/multi-detector instrumentation.

2.3 Key steps of this method as implemented for each sample tube include: Stringent leak testing under stop flow, recording ambient temperature conditions, adding internal standards, purging the tube, thermally desorbing the sampling tube, refocusing on a focusing trap, desorbing and transferring/injecting the VOCs from the secondary trap into the capillary GC column for separation and analysis.

2.4 Water management steps incorporated into this method include: (a) Selection of hydrophobic sorbents in the sampling tube; (b) optional dry purging of sample tubes prior to analysis; and (c) additional selective elimination of water during primary (tube) desorption (if required) by selecting trapping sorbents and temperatures such that target compounds are quantitatively retained while water is purged to vent.

3.0 Definitions

(See also Section 3.0 of Method 325A).

3.1 Blanking is the desorption and confirmatory analysis of conditioned sorbent tubes before they are sent for field sampling.

3.2 *Breakthrough volume and associated relation to passive sampling.* Breakthrough volumes, as applied to active sorbent tube sampling, equate to the volume of air containing a constant concentration of analyte that may be passed through a sorbent tube at a given temperature before a detectable level (5 percent) of the input analyte concentration elutes from the tube. Although breakthrough volumes are directly related to active rather than passive sampling, they provide a measure of the strength of the sorbent-sorbate interaction and therefore also relate to the efficiency of the passive sampling process. The best direct measure of passive sampling efficiency is the stability of the uptake rate. Quantitative passive sampling is compromised when the sorbent no longer acts as a perfect sink—*i.e.*, when the concentration of a target analyte immediately above the sorbent sampling surface no longer approximates to zero. This causes a reduction in the uptake rate over time. If the uptake rate for a given analyte on a given sorbent tube remains relatively constant—*i.e.*, if the uptake rate determined for 48 hours is similar to that determined for 7 or 14 days—the user can be confident that passive sampling is occurring at a constant rate. As a general rule of thumb, such ideal passive sampling conditions typically exist for analyte:sorbent combinations where the breakthrough volume exceeds 100 L (Reference 4).

3.3 *Continuing calibration verification sample (CCV).* Single level calibration samples run periodically to confirm that the analytical system continues to generate sample results within acceptable agreement to the current calibration curve.

3.4 *Focusing trap* is a cooled, secondary sorbent trap integrated into the analytical

thermal desorber. It typically has a smaller i.d. and lower thermal mass than the original sample tube allowing it to effectively refocus desorbed analytes and then heat rapidly to ensure efficient transfer/injection into the capillary GC analytical column.

3.5 *High Resolution Capillary Column Chromatography* uses fused silica capillary columns with an inner diameter of 320 µm or less and with a stationary phase film thickness of 5 µm or less.

3.6 *h* is time in hours.

3.7 *i.d.* is inner diameter.

3.8 *min* is time in minutes.

3.9 *Method Detection Limit* is the lowest level of analyte that can be detected in the sample matrix with 99% confidence.

3.10 *MS-SCAN* is the mode of operation of a GC quadrupole mass spectrometer detector that measures all ions over a given mass range over a given period of time.

3.11 *MS-SIM* is the mode of operation of a GC quadrupole mass spectrometer detector that measures only a single ion or a selected number of discrete ions for each analyte.

3.12 *o.d.* is outer diameter.

3.13 *ppbv* is parts per billion by volume.

3.14 *Thermal desorption* is the use of heat and a flow of inert (carrier) gas to extract volatiles from a solid matrix. No solvent is required.

3.15 *Total ion chromatogram* is the chromatogram produced from a mass spectrometer detector collecting full spectral information.

3.16 *Two-stage thermal desorption* is the process of thermally desorbing analytes from a sorbent tube, reconcentrating them on a focusing trap (see Section 3.4), which is then itself rapidly heated to “inject” the concentrated compounds into the GC analyzer.

3.17 *VOC* is volatile organic compound.

4.0 Analytical Interferences

4.1 *Interference from Sorbent Artifacts.* Artifacts may include target analytes as well as other VOC that co-elute chromatographically with the compounds of interest or otherwise interfere with the identification or quantitation of target analytes.

4.1.1 Sorbent decomposition artifacts are VOCs that form when sorbents degenerate, *e.g.*, when exposed to reactive species during sampling. For example, benzaldehyde, phenol, and acetophenone artifacts are reported to be formed via oxidation of the polymeric sorbent Tenax® when sampling high concentration (100–500 ppb) ozone atmospheres (Reference 5).

4.1.2 Preparation and storage artifacts are VOCs that were not completely cleaned from the sorbent tube during conditioning or that are an inherent feature of that sorbent at a given temperature.

4.2 *Humidity.* Moisture captured during sampling can interfere with VOC analysis. Passive sampling using tubes packed with hydrophobic sorbents, like those described in this method, minimizes water retention. However, if water interference is found to be an issue under extreme conditions, one or more of the water management steps described in Section 2.4 can be applied.

4.3 *Contamination from Sample Handling.* The type of analytical thermal

desorption equipment selected should exclude the possibility of outer tube surface contamination entering the sample flow path (see Section 6.6). If the available system does not meet this requirement, sampling tubes and caps must be handled only while wearing clean, white cotton or powder free nitrile gloves to prevent contamination with body oils, hand lotions, perfumes, etc.

5.0 Safety

5.1 This method does not address all of the safety concerns associated with its use. It is the responsibility of the user of this

standard to establish appropriate field and laboratory safety and health practices prior to use.

5.2 Laboratory analysts must exercise extreme care in working with high-pressure gas cylinders.

5.3 Due to the high temperatures involved, operators must use caution when conditioning and analyzing tubes.

6.0 Equipment and Supplies

6.1 *Tube Dimensions and Materials.* The sampling tubes for this method are 3.5-inches (89 mm) long, ¼ inch (6.4 mm) o.d., and 5

mm i.d. passive sampling tubes (see Figure 6.1). The tubes are made of inert-coated stainless steel with the central section (up to 60 mm) packed with sorbent, typically supported between two 100 mesh stainless steel gauze. The tubes have a cross sectional area of 19.6 square mm (5 mm i.d.). When used for passive sampling, these tubes have an internal diffusion (air) gap (DG) of 1.5 cm between the sorbent retaining gauze at the sampling end of the tube, and the gauze in the diffusion cap.

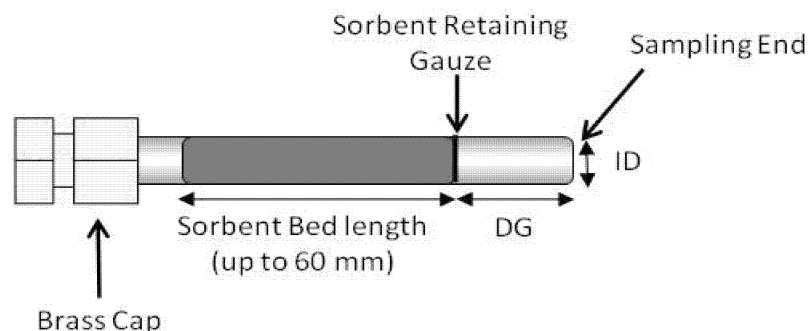


Figure 6.1. Cross Section View of Passive Sorbent Tube

6.2 Tube Conditioning Apparatus

6.2.1 Freshly packed or newly purchased tubes must be conditioned as described in Section 9 using an appropriate dedicated tube conditioning unit or the thermal desorber. Note that the analytical TD system should be used for tube conditioning if it supports a dedicated tube conditioning mode in which effluent from contaminated tubes is directed to vent without passing through key parts of the sample flow path such as the focusing trap.

6.2.2 Dedicated tube conditioning units must be leak-tight to prevent air ingress, allow precise and reproducible temperature selection ($\pm 5^\circ\text{C}$), offer a temperature range at least as great as that of the thermal desorber, and support inert gas flows in the range up to 100 mL/min.

Note: For safety and to avoid laboratory contamination, effluent gases from freshly packed or highly contaminated tubes should be passed through a charcoal filter during the conditioning process to prevent desorbed VOCs from polluting the laboratory atmosphere.

6.3 Tube Labeling

6.3.1 Label the sample tubes with a unique permanent identification number and an indication of the sampling end of the tube. Labeling options include etching and TD-compatible electronic (radio frequency identification (RFID)) tube labels.

6.3.2 To avoid contamination, do not make ink markings of any kind on clean sorbent tubes or apply adhesive labels.

Note: TD-compatible electronic (RFID) tube labels are available commercially and are compatible with some brands of thermal desorber. If used, these may be programmed

with relevant tube and sample information, which can be read and automatically transcribed into the sequence report by the TD system (see Section 8.6 of Method 325A).

6.4 Blank and Sampled Tube Storage Apparatus

6.4.1 Long-term storage caps. Seal clean, blank and sampled sorbent tubes using inert, long-term tube storage caps comprising non-greased, 2-piece, 0.25-inch, metal SwageLok®-type screw caps fitted with combined polytetrafluoroethylene ferrules.

6.4.2 Storage and transportation containers. Use clean glass jars, metal cans or rigid, non-emitting polymer boxes.

Note: You may add a small packet of new activated charcoal or charcoal/silica gel to the shipping container for storage and transportation of batches of conditioned sorbent tubes prior to use. Coolers without ice packs make suitable shipping boxes for containers of tubes because the coolers help to insulate the samples from extreme temperatures (e.g., if left in a parked vehicle).

6.5 Unheated GC Injection Unit for Loading Standards Onto Blank Tubes

A suitable device has a simple push fit or finger-tightening connector for attaching the sampling end of blank sorbent tubes without damaging the tube. It also has a means of controlling carrier gas flow through the injector and attached sorbent tube at 50–100 mL/min and includes a low emission septum cap that allows the introduction of gas or liquid standards via appropriate syringes. Reproducible and quantitative transfer of higher boiling compounds in liquid standards is facilitated if the injection unit

allows the tip of the syringe to just touch the sorbent retaining gauze inside the tube.

6.6 Thermal Desorption Apparatus

The manual or automated thermal desorption system must heat sorbent tubes while a controlled flow of inert (carrier) gas passes through the tube and out of the sampling end. The apparatus must also incorporate a focusing trap to quantitatively refocus compounds desorbed from the tube. Secondary desorption of the focusing trap should be fast/efficient enough to transfer the compounds into the high resolution capillary GC column without band broadening and without any need for further pre- or on-column focusing. Typical TD focusing traps comprise small sorbent traps (Reference 16) that are electrically-cooled using multistage Peltier cells (References 17, 18). The direction of gas flow during trap desorption should be the reverse of that used for focusing to extend the compatible analyte volatility range. Closed cycle coolers offer another cryogen-free trap cooling option. Other TD system requirements and operational stages are described in Section 11 and in Figures 17–2 through 17–4.

6.7 Thermal Desorber—GC Interface

6.7.1 The interface between the thermal desorber and the GC must be heated uniformly and the connection between the transfer line insert and the capillary GC analytical column itself must be leak tight.

6.7.2 A portion of capillary column can alternatively be threaded through the heated transfer line/TD interface and connected directly to the thermal desorber.

Note: Use of a metal syringe-type needle or unheated length of fused silica pushed through the septum of a conventional GC

injector is not permitted as a means of interfacing the thermal desorber to the chromatograph. Such connections result in cold spots, cause band broadening and are prone to leaks.

6.8 GC/MS Analytical Components

6.8.1 The GC system must be capable of temperature programming and operation of a high resolution capillary column. Depending on the choice of column (e.g., film thickness) and the volatility of the target compounds, it may be necessary to cool the GC oven to subambient temperatures (e.g., -50°C) at the start of the run to allow resolution of very volatile organic compounds.

6.8.2 All carrier gas lines supplying the GC must be constructed from clean stainless steel or copper tubing. Non-polytetrafluoroethylene thread sealants. Flow controllers, cylinder regulators, or other pneumatic components fitted with rubber components are not suitable.

6.9 Chromatographic Columns

High-resolution, fused silica or equivalent capillary columns that provide adequate separation of sample components to permit identification and quantitation of target compounds must be used.

Note: 100-percent methyl silicone or 5-percent phenyl, 95-percent methyl silicone fused silica capillary columns of 0.25- to 0.32-mm i.d. of varying lengths and with varying thicknesses of stationary phase have been used successfully for non-polar and moderately polar compounds. However, given the diversity of potential target lists, GC column choice is left to the operator, subject to the performance criteria of this method.

6.10 Mass Spectrometer

Linear quadrupole, magnetic sector, ion trap or time-of-flight mass spectrometers may be used provided they meet specified performance criteria. The mass detector must be capable of collecting data from 35 to 300 atomic mass units (amu) every 1 second or less, utilizing 70 volts (nominal) electron energy in the electron ionization mode, and producing a mass spectrum that meets all the instrument performance acceptance criteria in Section 9 when 50 ng or less of p-bromofluorobenzene is analyzed.

7.0 Reagents and Standards

7.1 Sorbent Selection

7.1.1 Use commercially packed tubes meeting the requirements of this method or prepare tubes in the laboratory using sieved sorbents of particle size in the range 20 to 80 mesh that meet the retention and quality control requirements of this method.

7.1.2 This passive air monitoring method can be used without the evaluation specified in Addendum A if the type of tubes described in Section 6.1 are packed with 4–6 cm (typically 400–650 mg) of the sorbents listed in Table 12.1 and used for the respective target analytes.

Note: Although CarboxenTM X is the optimum sorbent choice for passive sampling of 1,3-butadiene, recovery of compounds with vapor pressure lower than benzene may

be difficult to achieve without exceeding sorbent maximum temperature limitations (see Table 8.1). See ISO 16017–2:2003(E) or ASTM D6196–03 (Reapproved 2009) (both incorporated by reference—see § 63.14) for more details on sorbent choice for air monitoring using passive sampling tubes.

7.1.3 If standard passive sampling tubes are packed with other sorbents or used for analytes other than those tabulated in Section 12.0, method performance and relevant uptake rates should be verified according to Addendum A to this method or by following the techniques described in one of the following national/international standard methods: ISO 16017–2:2003(E), ASTM D6196–03 (Reapproved 2009), or BS EN 14662–4:2005 (all incorporated by reference—see § 63.14)—or reported in the peer-reviewed open literature. A summary table and the supporting evaluation data demonstrating the selected sorbent meets the requirements in Addendum A to this method must be submitted to the regulatory authority as part of a request to use an alternative sorbent.

7.1.4 Passive (diffusive) sampling and thermal desorption methods that have been evaluated at relatively high atmospheric concentrations (i.e., mid-ppb to ppm) and published for use in workplace air and industrial/mobile source emissions testing (References 9–20) may be applied to this procedure. However, the validity of any shorter term uptake rates must be verified and adjusted if necessary for the longer monitoring periods required by this method by following procedures described in Addendum A to this method or those presented in national/international standard methods: ISO 16017–2:2003(E), ASTM D6196–03 (Reapproved 2009), or BS EN 14662–4:2005 (all incorporated by reference—see § 63.14).

7.1.5 Suitable sorbents for passive sampling must have breakthrough volumes of at least 20 L (preferably >100 L) for the compounds of interest and must quantitatively release the analytes during desorption without exceeding maximum temperatures for the sorbent or instrumentation.

7.1.6 Repack/replace the sorbent tubes or demonstrate tube performance following the requirements in Addendum A to this method at least every 2 years or every 50 uses, whichever occurs first.

7.2 Gas Phase Standards

7.2.1 Static or dynamic standard atmospheres may be used to prepare calibration tubes and/or to validate passive sampling uptake rates and can be generated from pure chemicals or by diluting concentrated gas standards. The standard atmosphere must be stable at ambient pressure and accurate to ± 10 percent of the target gas concentration. It must be possible to maintain standard atmosphere concentrations at the same or lower levels than the target compound concentration objectives of the test. Test atmospheres used for validation of uptake rates must also contain at least 35 percent relative humidity.

Note: Accurate, low-(ppb-) level gas-phase VOC standards are difficult to generate from

pure materials and may be unstable depending on analyte polarity and volatility. Parallel monitoring of vapor concentrations with alternative methods, such as pumped sorbent tubes or sensitive/selective on-line detectors, may be necessary to minimize uncertainty. For these reasons, standard atmospheres are rarely used for routine calibration.

7.2.2 Concentrated, pressurized gas phase standards. Accurate (± 5 percent or better), concentrated gas phase standards supplied in pressurized cylinders may also be used for calibration. The concentration of the standard should be such that a 0.5–5.0 mL volume contains approximately the same mass of analytes as will be collected from a typical air sample.

7.2.3 Follow manufacturer's guidelines concerning storage conditions and recertification of the concentrated gas phase standard. Gas standards must be recertified a minimum of once every 12 months.

7.3 Liquid Standards

Target analytes can also be introduced to the sampling end of sorbent tubes in the form of liquid calibration standards.

7.3.1 The concentration of liquid standards must be such that an injection of 0.5–2 μL of the solution introduces the same mass of target analyte that is expected to be collected during the passive air sampling period.

7.3.2 Solvent Selection. The solvent selected for the liquid standard must be pure (contaminants <10 percent of minimum analyte levels) and must not interfere chromatographically with the compounds of interest.

7.3.3 If liquid standards are sourced commercially, follow manufacturer's guidelines concerning storage conditions and shelf life of unopened and opened liquid stock standards.

Note: Commercial VOC standards are typically supplied in volatile or non-interfering solvents such as methanol.

7.3.4 Working standards must be stored at 6°C or less and used or discarded within two weeks of preparation.

7.4 Gas Phase Internal Standards

7.4.1 Gas-phase deuterated or fluorinated organic compounds may be used as internal standards for MS-based systems.

7.4.2 Typical compounds include deuterated toluene, perfluorobenzene and perfluorotoluene.

7.4.3 Use multiple internal standards to cover the volatility range of the target analytes.

7.4.4 Gas-phase standards must be obtained in pressurized cylinders and containing vendor certified gas concentrations accurate to ± 5 percent. The concentration should be such that the mass of internal standard components introduced is similar to those of the target analytes collected during field monitoring.

7.5 Preloaded Standard Tubes

Certified, preloaded standard tubes, accurate within ± 5 percent for each analyte at the microgram level and ± 10 percent at the nanogram level, are available commercially

and may be used for auditing and quality control purposes. (See Section 9.5 for audit accuracy evaluation criteria.) Certified preloaded tubes may also be used for routine calibration.

Note: Proficiency testing schemes are also available for TD/GC/MS analysis of sorbent tubes preloaded with common analytes such as benzene, toluene, and xylene.

7.6 Carrier Gases

Use inert, 99.999-percent or higher purity helium as carrier gas. Oxygen and organic

filters must be installed in the carrier gas lines supplying the analytical system according to the manufacturer's instructions. Keep records of filter and oxygen scrubber replacement.

8.0 Sorbent Tube Handling (Before and After Sampling)

8.1 Sample Tube Conditioning

8.1.1 Sampling tubes must be conditioned using the apparatus described in Section 6.2.

8.1.2 New tubes should be conditioned for 2 hours to supplement the vendor's conditioning procedure. Recommended temperatures for tube conditioning are given in Table 8.1.

8.1.3 After conditioning, the blank must be verified on each new sorbent tube and on 10 percent of each batch of reconditioned tubes. See Section 9.0 for acceptance criteria.

TABLE 8.1—EXAMPLE SORBENT TUBE CONDITIONING PARAMETERS

Sampling sorbent	Maximum temperature (°C)	Conditioning temperature (°C)	Carrier gas flow rate
Carbotrap® C Carbopack™ C Anasorb® GCB2 Carbograph™ 1 TD Carbotrap® Carbopack™ B Anasorb® GCB1 Tenax® TA Carbopack™ X	>400	350	100 mL/min
	350	330	100 mL/min

8.2 Capping, Storage and Shipment of Conditioned Tubes

8.2.1 Conditioned tubes must be sealed using long-term storage caps (see Section 6.4) pushed fully down onto both ends of the PS sorbent tube, tightened by hand and then tighten an additional quarter turn using an appropriate tool.

8.2.2 The capped tubes must be kept in appropriate containers for storage and transportation (see Section 6.4.2). Containers of sorbent tubes may be stored and shipped at ambient temperature and must be kept in a clean environment.

8.2.3 You must keep batches of capped tubes in their shipping boxes or wrap them in uncoated aluminum foil before placing them in their storage container, especially before air freight, because the packaging helps hold caps in position if the tubes get very cold.

8.3 Calculating the Number of Tubes Required for a Monitoring Exercise

8.3.1 Follow guidance given in Method 325A to determine the number of tubes required for site monitoring.

8.3.2 The following additional samples will also be required: Laboratory blanks as specified in Section 9.1.2 (one per analytical sequence minimum), field blanks as specified in Section 9.3.2 (two per sampling period minimum), CCV tubes as specified in Section 10.9.4. (at least one per analysis sequence or every 24 hours), and duplicate samples as specified in Section 9.4 (at least one duplicate sample is required for every 10 sampling locations during each monitoring period).

8.4 Sample Collection

8.4.1 Allow the tubes to equilibrate with ambient temperature (approximately 30 minutes to 1 hour) at the monitoring location

before removing them from their storage/shipping container for sample collection.

8.4.2 Tubes must be used for sampling within 30 days of conditioning (Reference 4).

8.4.3 During field monitoring, the long-term storage cap at the sampling end of the tube is replaced with a diffusion cap and the whole assembly is arranged vertically, with the sampling end pointing downward, under a protective hood or shield—See Section 6.1 of Method 325A for more details.

8.5 Sample Storage

8.5.1 After sampling, tubes must be immediately resealed with long-term storage caps and placed back inside the type of storage container described in Section 6.4.2.

8.5.2 Exposed tubes may not be placed in the same container as clean tubes. They should not be taken back out of the container until ready for analysis and after they have had time to equilibrate with ambient temperature in the laboratory.

8.5.3 Sampled tubes must be inspected before analysis to identify problems such as loose or missing caps, damaged tubes, tubes that appear to be leaking sorbent or container contamination. Any and all such problems must be documented together with the unique identification number of the tube or tubes concerned. Affected tubes must not be analyzed but must be set aside.

8.5.4 Intact tubes must be analyzed within 30 days of the end of sample collection (within one week for limonene, carene, bis-chloromethyl ether, labile sulfur or nitrogen-containing compounds, and other reactive VOCs).

Note: Ensure ambient temperatures stay below 23 °C during transportation and storage. Refrigeration is not normally required unless the samples contain reactive compounds or cannot be analyzed within 30 days. If refrigeration is used, the atmosphere

inside the refrigerator must be clean and free of organic solvents.

9.0 Quality Control

9.1 Laboratory Blank

The analytical system must be demonstrated to be contaminant free by performing a blank analysis at the beginning of each analytical sequence to demonstrate that the secondary trap and TD/GC/MS analytical equipment are free of any significant interferents.

9.1.1 Laboratory blank tubes must be prepared from tubes that are identical to those used for field sampling.

9.1.2 Analysis of at least one laboratory blank is required per analytical sequence. The laboratory blank must be stored in the laboratory under clean, controlled ambient temperature conditions.

9.1.3 Laboratory blank/artifact levels must meet the requirements of Section 9.2.2 (see also Table 17.1). If the laboratory blank does not meet requirements, stop and perform corrective actions and then re-analyze laboratory blank to ensure it meets requirements.

9.2 Tube Conditioning

9.2.1 Conditioned tubes must be demonstrated to be free of contaminants and interference by running 10 percent of the blank tubes selected at random from each conditioned batch under standard sample analysis conditions (see Section 8.1).

9.2.2 Confirm that artifacts and background contamination are ≤ 0.2 ppbv or less than three times the detection limit of the procedure or less than 10 percent of the target compound(s) mass that would be collected if airborne concentrations were at the regulated limit value, whichever is larger. Only tubes that meet these criteria can be

used for field monitoring, field or laboratory blanks, or for system calibration.

9.2.3 If unacceptable levels of VOCs are observed in the tube blanks, then the processes of tube conditioning and checking the blanks must be repeated.

9.3 Field Blanks

9.3.1 Field blank tubes must be prepared from tubes that are identical to those used for field sampling—*i.e.*, they should be from the same batch, have a similar history, and be conditioned at the same time.

9.3.2 Field blanks must be shipped to the monitoring site with the sampling tubes and must be stored at the sampling location throughout the monitoring exercise. The field blanks must be installed under a protective hood/cover at the sampling location, but the long-term storage caps must remain in place throughout the monitoring period (see Method 325A). The field blanks are then shipped back to the laboratory in the same container as the sampled tubes. One field blank tube is required for every 10 sampled tubes on a monitoring exercise and no less than two field blanks should be collected, regardless of the size of the monitoring study.

9.3.3 Field blanks must contain no greater than one-third of the measured target analyte or compliance limit for field samples (see Table 17.1). If either field blank fails, flag all data that do not meet this criterion with a note that the associated results are estimated and likely to be biased high due to field blank background.

9.4 Duplicate Samples

Duplicate (co-located) samples collected must be analyzed and reported as part of method quality control. They are used to evaluate sampling and analysis precision. Relevant performance criteria are given in Section 9.9.

9.5 Method Performance Criteria

Unless otherwise noted, monitoring method performance specifications must be demonstrated for the target compounds using the procedures described in Addendum A to this method and the statistical approach presented in Method 301.

9.6 Method Detection Limit

Determine the method detection limit under the analytical conditions selected (see

Section 11.3) using the procedure in Section 15 of Method 301. The method detection limit is defined for each system by making seven replicate measurements of a concentration of the compound of interest within a factor of five of the detection limit. Compute the standard deviation for the seven replicate concentrations, and multiply this value by three. The results should demonstrate that the method is able to detect analytes such as benzene at concentrations as low as 50 ppt or 1/3rd (preferably 1/10th) of the lowest concentration of interest, whichever is larger.

Note: Determining the detection limit may be an iterative process as described in 40 CFR part 136, Appendix B.

9.7 Analytical Bias

Analytical bias must be demonstrated to be within ± 30 percent using Equation 9.1. Analytical bias must be demonstrated during initial setup of this method and as part of the CCV carried out with every sequence of 10 samples or less (see Section 9.14). Calibration standard tubes (see Section 10.0) may be used for this purpose.

$$\text{Analytical Bias} = \frac{(\text{Spiked Value} - \text{Measured Value})}{\text{Spiked Value}} \times 100 \quad \text{Eq. 9.1}$$

Where:

Spiked Value = A known mass of VOCs added to the tube.

Measured Value = Mass determined from analysis of the tube.

9.8 Analytical Precision

Demonstrate an analytical precision within ± 20 percent using Equation 9.2. Analytical precision must be demonstrated during

initial setup of this method and at least once per year. Calibration standard tubes may be used (see Section 10.0) and data from CCV may also be applied for this purpose.

$$\text{Analytical Precision} = \frac{(|A1 - A2|)}{\bar{A}} \times 100 \quad \text{Eq. 9.2}$$

Where:

A1 = A measurement value taken from one spiked tube.

A2 = A measurement value taken from a second spiked tube.

$\bar{A}$ = The average of A1 and A2.

9.9 Field Replicate Precision

Use Equation 9.3 to determine and report replicate precision for duplicate field samples (see Section 9.4). The level of agreement between duplicate

field samples is a measure of the precision achievable for the entire sampling and analysis procedure. Flag data sets for which the duplicate samples do not agree within 30 percent.

$$\text{Field Precision} = \frac{(|F1 - F2|)}{\bar{F}} \times 100 \quad \text{Eq. 9.3}$$

Where:

F1 = A measurement value (mass) taken from one of the two field replicate tubes used in sampling.

F2 = A measurement value (mass) taken from the second of two field replicate tubes used in sampling.

$\bar{F}$ = The average of F1 and F2.

9.10 Desorption Efficiency and Compound Recovery

The efficiency of the thermal desorption method must be determined.

9.10.1 Quantitative (>95 percent) compound recovery must be demonstrated by repeat analyses on a same standard tube.

9.10.2 Compound recovery through the TD system can also be demonstrated by comparing the calibration check sample response factor obtained from direct GC injection of liquid standards with that obtained from thermal desorption analysis response factor using the same column under identical conditions.

9.10.3 If the relative response factors obtained for one or more target compounds introduced to the column via thermal

desorption fail to meet the criteria in Section 9.10.1, you must adjust the TD parameters to meet the criteria and repeat the experiment. Once the thermal desorption conditions have been optimized, you must repeat this test each time the analytical system is recalibrated to demonstrate continued method performance.

9.11 Audit Samples

Certified reference standard samples must be used to audit this procedure (if available). Accuracy within 30 percent must be

demonstrated for relevant ambient air concentrations (0.5 to 25 ppb).

9.12 Mass Spectrometer Tuning Criteria

Tune the mass spectrometer (if used) according to manufacturer's specifications.

Verify the instrument performance by analyzing a 50 ng injection of bromofluorobenzene. Prior to the beginning of each analytical sequence or every 24 hours during continuous GC/MS operation for this

method demonstrate that the bromofluorobenzene tuning performance criteria in Table 9.1 have been met.

TABLE 9.1—GC/MS TUNING CRITERIA ¹

Target mass	Rel. to mass	Lower limit %	Upper limit %
50	95	8	40
75	95	30	66
95	95	100	100
96	95	5	9
173	174	0	2
174	95	50	120
175	174	4	9
176	174	93	101
177	176	5	9

¹ All ion abundances must be normalized to m/z 95, the nominal base peak, even though the ion abundance of m/z 174 may be up to 120 percent that of m/z 95.

9.13 Routine CCV at the Start of a Sequence

Run CCV before each sequence of analyses and after every tenth sample to ensure that the previous multi-level calibration (see Section 10.6.3) is still valid.

9.13.1 The sample concentration used for the CCV should be near the mid-point of the multi-level calibration range.

9.13.2 Quantitation software must be updated with response factors determined from the CCV standard. The percent deviation between the initial calibration and the CCV for all compounds must be within 30 percent.

9.14 CCV at the End of a Sequence

Run another CCV after running each sequence of samples. The initial CCV for a subsequent set of samples may be used as the final CCV for a previous analytical sequence, provided the same analytical method is used and the subsequent set of samples is analyzed immediately (within 4 hours) after the last CCV.

9.15 Additional Verification

Use a calibration check standard from a second, separate source to verify the original calibration at least once every three months.

9.16 Integration Method

Document the procedure used for integration of analytical data including field samples, calibration standards and blanks.

9.17 QC Records

Maintain all QC reports/records for each TD/GC/MS analytical system used for application of this method. Routine quality control requirements for this method are listed below and summarized in Table 17.1.

10.0 Calibration and Standardization

10.1 Calibrate the analytical system using standards covering the range of analyte masses expected from field samples.

10.2 Analytical results for field samples must fall within the calibrated range of the analytical system to be valid.

10.3 Calibration standard preparation must be fully traceable to primary standards

of mass and/or volume, and/or be confirmed using an independent certified reference method.

10.3.1 Preparation of calibration standard tubes from standard atmospheres.

10.3.1.1 Subject to the requirements in Section 7.2.1, low-level standard atmospheres may be introduced to clean, conditioned sorbent tubes in order to produce calibration standards.

10.3.1.2 The standard atmosphere generator or system must be capable of producing sufficient flow at a constant rate to allow the required analyte mass to be introduced within a reasonable time frame and without affecting the concentration of the standard atmosphere itself.

10.3.1.3 The sampling manifold may be heated to minimize risk of condensation but the temperature of the gas delivered to the sorbent tubes may not exceed 100 °F.

10.3.1.4 The flow rates passed through the tube should be in the order of 50–100 mL/min and the volume of standard atmosphere sampled from the manifold or chamber must not exceed the breakthrough volume of the sorbent at the given temperature.

10.4 Preparation of calibration standard tubes from concentrated gas standards.

10.4.1 If a suitable concentrated gas standard (see Section 7.2.2) can be obtained, follow the manufacturer's recommendations relating to suitable storage conditions and product lifetime.

10.4.2 Introduce precise 0.5 to 500.0 mL aliquots of the standard to the sampling end of conditioned sorbent tubes in a 50–100 mL/min flow of pure carrier gas.

Note: This can be achieved by connecting the sampling end of the tube to an unheated GC injector (see Section 6.6) and introducing the aliquot of gas using a suitable gas syringe. Gas sample valves could alternatively be used to meter the standard gas volume.

10.4.3 Each sorbent tube should be left connected to the flow of gas for 2 minutes after standard introduction. As soon as each spiked tube is removed from the injection unit, seal it with long-term storage caps and place it in an appropriate tube storage/

transportation container if it is not to be analyzed within 24 hours.

10.5 Preparation of calibration standard tubes from liquid standards.

10.5.1 Suitable standards are described in Section 7.3.

10.5.2 Introduce precise 0.5 to 2 µl aliquots of liquid standards to the sampling end of sorbent tubes in a flow (50–100 mL/min) of carrier gas using a precision syringe and an unheated injector (Section 6.5). The flow of gas should be sufficient to completely vaporize the liquid standard.

Note: If the analytes of interest are higher boiling than n-decane, reproducible analyte transfer to the sorbent bed is optimized by allowing the tip of the syringe to gently touch the sorbent retaining gauze at the sampling end of the tube.

10.5.3 Each sorbent tube is left connected to the flow of gas for 5 minutes after liquid standard introduction.

10.5.3.1 As soon as each spiked tube is removed from the injection unit, seal it with long-term storage caps and place it in an appropriate tube storage container if it is not to be analyzed within 24 hours.

Note: In cases where it is possible to selectively purge the solvent from the tube while all target analytes are quantitatively retained, a larger 2 µL injection may be made for optimum accuracy. However, if the solvent cannot be selectively purged and will be present during analysis, the injection volume should be as small as possible (e.g., 0.5 µL) to minimize solvent interference.

Note: This standard preparation technique requires the entire liquid plug including the tip volume be brought into the syringe barrel. The volume in the barrel is recorded, the syringe is inserted into the septum of the spiking apparatus. The liquid is then quickly injected. Any remaining liquid in the syringe tip is brought back into the syringe barrel. The volume in the barrel is recorded and the amount spiked onto the tube is the difference between the before spiking volume and the after spiking volume. A bias occurs with this method when sample is drawn continuously up into the syringe to the specified volume

and the calibration solution in the syringe tip is ignored.

10.6 Preparation of calibration standard tubes from multiple standards.

10.6.1 If it is not possible to prepare one standard containing all the compounds of interest (e.g., because of chemical reactivity or the breadth of the volatility range), standard tubes can be prepared from multiple gas or liquid standards.

10.6.2 Follow the procedures described in Sections 10.4 and 10.5, respectively, for introducing each gas and/or liquid standard to the tube and load those containing the highest boiling compounds of interest first and the lightest species last.

10.7 Additional requirements for preparation of calibration tubes.

10.7.1 Storage of Calibration Standard Tubes

10.7.1.1 Seal tubes with long-term storage caps immediately after they have been disconnected from the standard loading manifold or injection apparatus.

10.7.1.2 Calibration standard tubes may be stored for no longer than 30 days and should be refrigerated if there is any risk of chemical interaction or degradation. Audit standards (see section 9.11) are exempt from this criteria and may be stored for the shelf-life specified on their certificates.

10.8 Keep records for calibration standard tubes to include the following:

10.8.1 The stock number of any commercial liquid or gas standards used.

10.8.2 A chromatogram of the most recent blank for each tube used as a calibration standard together with the associated analytical conditions and date of cleaning.

10.8.3 Date of standard loading.

10.8.4 List of standard components, approximate masses and associated confidence levels.

10.8.5 Example analysis of an identical standard with associated analytical conditions.

10.8.6 A brief description of the method used for standard preparation.

10.8.7 The standard's expiration date.

10.9 TD/GC/MS using standard tubes to calibrate system response.

10.9.1 Verify that the TD/GC/MS analytical system meets the instrument performance criteria given in Section 9.1.

10.9.2 The prepared calibration standard tubes must be analyzed using the analytical conditions applied to field samples (see Section 11.0) and must be selected to ensure quantitative transfer and adequate chromatographic resolution of target compounds, surrogates, and internal standards in order to enable reliable identification and quantitation of compounds of interest. The analytical conditions should also be sufficiently stringent to prevent buildup of higher boiling, non-target

contaminants that may be collected on the tubes during field monitoring.

10.9.3 Calibration range. Each TD/GC/MS system must be calibrated at five concentrations that span the monitoring range of interest before being used for sample analysis. This initial multi-level calibration determines instrument sensitivity under the analytical conditions selected and the linearity of GC/MS response for the target compounds. One of the calibration points must be within a factor of five of the detection limit for the compounds of interest.

10.9.4 One of the calibration points from the initial calibration curve must be at the same concentration as the daily CCV standard (e.g., the mass collected when sampling air at typical concentrations).

10.9.5 Calibration frequency. Each GC/MS system must be recalibrated with a full 5-point calibration curve following corrective action (e.g., ion source cleaning or repair, column replacement) or if the instrument fails the daily calibration acceptance criteria.

10.9.5.1 CCV checks must be carried out on a regular routine basis as described in Section 9.14.

10.9.5.2 Quantitation ions for the target compounds are shown in Table 10.1. Use the primary ion unless interferences are present, in which case you should use a secondary ion.

TABLE 10.1—CLEAN AIR ACT VOLATILE ORGANIC COMPOUNDS FOR PASSIVE SORBENT SAMPLING

Compound	CAS No.	BP (°C)	Vapor pressure (mmHg) ^a	MW ^b	Characteristic ion(s)	
					Primary	Secondary
1,1-Dichloroethene	75–35–4	32	500	96.9	61	96
3-Chloropropene	107–05–1	44.5	340	76.5	76	41, 39, 78
1,1,2-Trichloro-1,2,2-trifluoroethane- 1,1-Dichloroethane	75–34–3	57.0	230	99	63	65, 83, 85, 98, 100
1,2-Dichloroethane	107–06–2	83.5	61.5	99	62	98
1,1,1-Trichloroethane	71–55–6	74.1	100	133.4	97	99, 61
Benzene	71–43–2	80.1	76.0	78	78	.....
Carbon tetrachloride	56–23–5	76.7	90.0	153.8	117	119
1,2-Dichloropropane	78–87–5	97.0	42.0	113	63	112
Trichloroethene	79–01–6	87.0	20.0	131.4	95	97, 130, 132
1,1,2-Trichloroethane	79–00–5	114	19.0	133.4	83	97, 85
Toluene	108–88–3	111	22.0	92	92	91
Tetrachloroethene	127–18–4	121	14.0	165.8	164	129, 131, 166
Chlorobenzene	108–90–7	132	8.8	112.6	112	77, 114
Ethylbenzene	100–41–4	136	7.0	106	91	106
m,p-Xylene	108–38–3, 106–42–3	138	6.5	106.2	106	91
Styrene	100–42–5	145	6.6	104	104	78
o-Xylene	95–47–6	144	5.0	106.2	106	91
p-Dichlorobenzene	106–46–7	173	0.60	147	146	111, 148

^a Pressure in millimeters of mercury.

^b Molecular weight.

11.0 Analytical Procedure

11.1 Preparation for Sample Analysis

11.1.1 Each sequence of analyses must be ordered as follows:

11.1.1.1 CCV.

11.1.1.2 A laboratory blank.

11.1.1.3 Field blank.

11.1.1.4 Sample(s).

11.1.1.5 Field blank.

11.1.1.6 CCV after 10 field samples.

11.1.1.7 CCV at the end of the sample batch.

11.2 Pre-desorption System Checks and Procedures

11.2.1 Ensure all sample tubes and field blanks are at ambient temperature before removing them from the storage container.

11.2.2 If using an automated TD/GC/MS analyzer, remove the long-term storage caps from the tubes, replace them with

appropriate analytical caps, and load them into the system in the sequence described in Section 11.1. Alternatively, if using a manual system, uncap and analyze each tube, one at a time, in the sequence described in Section 11.1.

11.2.3 The following thermal desorption system integrity checks and procedures are required before each tube is analyzed.

Note: Commercial thermal desorbers should implement these steps automatically.

11.2.3.1 Tube leak test: Each tube must be leak tested as soon as it is loaded into the carrier gas flow path before analysis to ensure data integrity.

11.2.3.2 Conduct the leak test at the GC carrier gas pressure, without heat or gas flow applied. Tubes that fail the leak test should not be analyzed, but should be resealed and stored intact. On automated systems, the instrument should continue to leak test and analyze subsequent tubes after a given tube has failed. Automated systems must also store and record which tubes in a sequence have failed the leak test. Information on failed tubes should be downloaded with the batch of sequence information from the analytical system.

11.2.3.3 Leak test the sample flow path. Leak check the sample flow path of the thermal desorber before each analysis without heat or gas flow applied to the sample tube. Stop the automatic sequence of tube desorption and GC analysis if any leak is detected in the main sample flow path. This process may be carried out as a separate step or as part of Section 11.2.3.2.

11.2.4 Optional Dry Purge

11.2.4.1 Tubes may be dry purged with a flow of pure dry gas passing into the tube from the sampling end, to remove water vapor and other very volatile interferents if required.

11.2.5 Internal Standard (IS) Addition

11.2.5.1 Use the internal standard addition function of the automated thermal desorber (if available) to introduce a precise aliquot of the internal standard to the sampling end of each tube after the leak test and shortly before primary (tube) desorption).

Note: This step can be combined with dry purging the tube (Section 11.2.4) if required.

11.2.5.2 If the analyzer does not have a facility for automatic IS addition, gas or liquid internal standard can be manually introduced to the sampling end of tubes in a flow of carrier gas using the types of procedure described in Sections 10.3 and 10.4, respectively.

11.2.6 Pre-purge. Each tube should be purged to vent with carrier gas flowing in the desorption direction (*i.e.*, flowing into the tube from the non-sampling end) to remove oxygen before heat is applied. This is to prevent analyte and sorbent oxidation and to prevent deterioration of key analyzer components such as the GC column and mass spectrometer (if applicable). A series of schematics illustrating these steps is presented in Figures 17.2 and 17.3.

11.3 Analytical Procedure

11.3.1 Steps Required for Thermal Desorption

11.3.1.1 Ensure that the pressure and purity of purge and carrier gases supplying the TD/GC/MS system, meet manufacturer specifications and the requirements of this method.

11.3.1.2 Ensure also that the analytical method selected meets the QC requirements

of this method (Section 9) and that all the analytical parameters are at set point.

11.3.1.3 Conduct predesorption system checks (see Section 11.2).

11.3.1.4 Desorb the sorbent tube under conditions demonstrated to achieve >95 percent recovery of target compounds (see Section 9.5.2).

Note: Typical tube desorption conditions range from 280–350 °C for 5–15 minutes with a carrier gas flow of 30–100 mL/min passing through the tube from the non-sampling end such that analytes are flushed out of the tube from the sampling end. Desorbed VOCs are concentrated (refocused) on a secondary, cooled sorbent trap integrated into the analytical equipment (see Figure 17.4). The focusing trap is typically maintained at a temperature between –30 and +30 °C during focusing. Selection of hydrophobic sorbents for focusing and setting a trapping temperature of +25 to 27 °C aid analysis of humid samples because these settings allow selective elimination of any residual water from the system, prior to GC/MS analysis.

Note: The transfer of analytes from the tube to the focusing trap during primary (tube) desorption can be carried out splitless or under controlled split conditions (see Figure 17.4) depending on the masses of target compounds sampled and the requirements of the system—sensitivity, required calibration range, column overload limitations, etc. Instrument controlled sample splits must be demonstrated by showing the reproducibility using calibration standards. Field and laboratory blank samples must be analyzed at the same split as the lowest calibration standard. During secondary (trap) desorption the focusing trap is heated rapidly (typically at rates >40 °C/s) with inert (carrier) gas flowing through the trap (3–100 mL/min) in the reverse direction to that used during focusing.

11.3.1.5 The split conditions selected for optimum field sample analysis must also be demonstrated on representative standards.

Note: Typical trap desorption temperatures are in the range 250–360 °C, with a “hold” time of 1–3 minutes at the highest temperature. Trap desorption automatically triggers the start of GC analysis. The trap desorption can also be carried out under splitless conditions (*i.e.*, with everything desorbed from the trap being transferred to the analytical column and GC detector) or, more commonly, under controlled split conditions (see Figure 17.4). The selected split ratio depends on the masses of target compounds sampled and the requirements of the system—sensitivity, required calibration range, column overload limitations, etc. If a split is selected during both primary (trap) desorption and secondary (trap) desorption, the overall split ratio is the product of the two. Such ‘double’ split capability gives optimum flexibility for accommodating concentrated samples as well as trace-level samples on the TD/GC/MS analytical system. High resolution capillary columns and most GC/MS detectors tend to work best with approximately 20–200 ng per compound per tube to avoid saturation. The overall split ratio must be adjusted such that, when it is applied to the sample mass that is expected

to be collected during field monitoring, the amount reaching the column will be attenuated to fall within this range. As a rule of thumb this means that ~20 ng samples will require splitless or very low split analysis, ~2 µg samples will require a split ratio in the order of ~50:1 and 200 µg samples will require a double split method with an overall split ratio in the order of 2,000:1.

11.3.1.6 Analyzed tubes must be resealed with long-term storage caps immediately after analysis (manual systems) or after completion of a sequence (automated systems). This prevents contamination, minimizing the extent of tube reconditioning required before subsequent reuse.

11.3.2 GC/MS Analytical Procedure

11.3.2.1 Heat/cool the GC oven to its starting set point.

11.3.2.2 If using a GC/MS system, it can be operated in either MS-Scan or MS-SIM mode (depending on required sensitivity levels and the type of mass spectrometer selected). As soon as trap desorption and transfer of analytes into the GC column triggers the start of the GC/MS analysis, collect mass spectral data over a range of masses from 35 to 300 amu. Collect at least 10 data points per eluting chromatographic peak in order to adequately integrate and quantify target compounds.

11.3.2.3 Use secondary ion quantitation only when there are sample matrix interferences with the primary ion. If secondary ion quantitation is performed, flag the data and document the reasons for the alternative quantitation procedure.

11.3.2.4 Data reduction is performed by the instruments post processing program that is automatically accessed after data acquisition is completed at the end of the GC run. The concentration of each target compound is calculated using the previously established response factors for the CCV analyzed in Section 11.1.1.6.

11.3.2.5 Whenever the thermal desorption—GC/MS analytical method is changed or major equipment maintenance is performed, you must conduct a new five-level calibration (see Section 10.6.3). System calibration remains valid as long as results from subsequent CCV are within 30 percent of the most recent 5-point calibration (see Section 10.9.5). Include relevant CCV data in the supporting information in the data report for each set of samples.

11.3.2.6 Document, flag and explain all sample results that exceed the calibration range. Report flags and provide documentation in the analytical results for the affected sample(s).

12.0 Data Analysis, Calculations, and Reporting

12.1 Recordkeeping Procedures for Sorbent Tubes

12.1.1 Label sample tubes with a unique identification number as described in Section 6.3.

12.1.2 Keep records of the tube numbers and sorbent lots used for each sampling period.

12.1.3 Keep records of sorbent tube packing if tubes are manually prepared in the

laboratory and not supplied commercially. These records must include the masses and/or bed lengths of sorbent(s) contained in each tube, the maximum allowable temperature for that tube and the date each tube was packed. If a tube is repacked at any stage, record the date of tube repacking and any other relevant information required in Section 12.1.

12.1.4 Keep records of the conditioning and blanking of tubes. These records must include, but are not limited to, the unique identification number and measured background resulting from the tube conditioning.

12.1.5 Record the location, dates, tube identification and times associated with each sample collection. Record this information

on a Chain of Custody form that is sent to the analytical laboratory.

12.1.6 Field sampling personnel must complete and send a Chain of Custody to the analysis laboratory (see Section 8.6.4 of Method 325A for what information to include and Section 17.0 of this method for an example form). Duplicate copies of the Chain of Custody must be included with the sample report and stored with the field test data archive.

12.1.7 Field sampling personnel must also keep records of the unit vector wind direction, sigma theta, temperature and barometric pressure averages for the sampling period. See Section 8.3.4 of Method 325A.

12.1.8 Laboratory personnel must record the sample receipt date, and analysis date.

12.1.9 Laboratory personnel must maintain records of the analytical method and sample results in electronic or hardcopy in sufficient detail to reconstruct the calibration, sample, and quality control results from each sampling period.

12.2 Calculations

12.2.1 Complete the calculations in this section to determine compliance with calibration quality control criteria (see also Table 17.1).

12.2.1.1 Response factor (RF). Calculate the RF using Equation 12.1:

$$RF = \frac{[A_s \times M_{is}]}{[A_{is} \times M_s]} \quad \text{Eq. 12.1}$$

Where:

A_s = Peak area for the characteristic ion of the analyte.

A_{is} = Peak area for the characteristic ion of the internal standard.

M_s = Mass of the analyte.

M_{is} = Mass of the internal standard.

12.2.1.2 Standard deviation of the response factors (SD_{RF}). Calculate the SDRF using Equation 12.2:

$$SD_{RF} = \sqrt{\frac{\sum_{i=1}^n (RF_i - \overline{RF})^2}{(n-1)}} \quad \text{Eq. 12.2}$$

Where:

RF_i = RF for each of the calibration compounds.

$\overline{RF}$ = Mean RF for each compound from the initial calibration.

n = Number of calibration standards.

12.2.1.3 Percent deviation (%DEV). Calculate the %DEV using Equation 12.3:

$$\%DEV = SD_{RF} \div \overline{RF} \times 100 \quad \text{Eq. 12.3}$$

Where:

SD_{RF} = Standard deviation.

$\overline{RF}$ = Mean RF for each compound from the initial calibration.

12.2.1.4 Relative percent difference (RPD). Calculate the RPD using Equation 12.4:

$$RPD = \frac{R1 - R2}{[(R1 + R2)/2]} \times 100 \quad \text{Eq. 12.4}$$

Where:

$R1, R2$ = Values that are being compared (*i.e.*, response factors in CCV).

12.2.2 Determine the equivalent concentration of compounds in atmospheres as follows.

12.2.3 Correct target concentrations determined at the sampling site temperature

and atmospheric pressure to standard conditions (25 °C and 760 mm mercury) using Equation 12.5 (Reference 21).

$$U_{NTP} = U \times \left(\frac{298.2}{t_{ss}} \right)^{\frac{3}{2}} \times \left(\frac{P_{ss}}{760} \right) \quad \text{Eq. 12.5}$$

Where:

t_{ss} = The average temperature during the collection period at the sampling site (K).

P_{ss} = The average pressure at the sampling site during the collection period (mm Hg).

U = The diffusive uptake rate (sampling rate) (mL/min).

12.2.4 For passive sorbent tube samples, calculate the concentration of the target

compound(s) in the sampled air, in $\mu\text{g}/\text{m}^3$ by using Equation 12.6 (Reference 22).

$$C_m = \frac{m_{\text{meas}}}{U_{\text{NTP}} \times t} \times 10^6 \quad \text{Eq. 12.6}$$

Where:

C_m = The concentration of target compound in the air sampled ($\mu\text{g}/\text{m}^3$).

m_{meas} = The mass of the compound as measured in the sorbent tube (μg).

U_{NTP} = The diffusive uptake rate corrected for local conditions (sampling rate) (mL/min).

t = The exposure time (minutes).

Note: Diffusive uptake rates for common VOCs, using carbon sorbents packed into sorbent tubes of the dimensions specified in Section 6.1, are listed in Table 12.1. Adjust analytical conditions to keep expected sampled masses within range (see Sections 11.3.1.3 to 11.3.1.5). Best possible method

detection limits are typically in the order of 0.1 ppb for 1,3-butadiene and 0.05 ppb for volatile aromatics such as benzene for 14-day monitoring. However, actual detection limits will depend upon the analytical conditions selected.

TABLE 12.1—VALIDATED SORBENTS AND UPTAKE RATES (ML/MIN) FOR SELECTED CLEAN AIR ACT COMPOUNDS

Compound	Carbopack™ X ^a	Carbograph™1 TD	Carbopack™ B
1,1-Dichloroethene	0.57 ± 0.14	not available	not available.
3-Chloropropene	0.51 ± 0.3	not available	not available.
1,1-Dichloroethane	0.57 ± 0.1	not available	not available.
1,2-Dichloroethane	0.57 ± 0.08	not available	not available.
1,1,1-Trichloroethane	0.51 ± 0.1	not available	not available.
Benzene	0.67 ± 0.06	0.63 ± 0.07 ^b	0.63 ± 0.07 ^b .
Carbon tetrachloride	0.51 ± 0.06	not available	not available.
1,2-Dichloropropane	0.52 ± 0.1	not available	not available.
Trichloroethene	0.5 ± 0.05	not available	not available.
1,1,2-Trichloroethane	0.49 ± 0.13	not available	not available.
Toluene	0.52 ± 0.14	0.56 ± 0.06 ^c	0.56 ± 0.06 ^c .
Tetrachloroethene	0.48 ± 0.05	not available	not available.
Chlorobenzene	0.51 ± 0.06	not available	not available.
Ethylbenzene	0.46 ± 0.07	not available	0.50 ^c .
m,p-Xylene	0.46 ± 0.09	0.47 ± 0.04 ^c	0.47 ± 0.04 ^c .
Styrene	0.5 ± 0.14	not available	not available.
o-Xylene	0.46 ± 0.12	0.47 ± 0.04 ^c	0.47 ± 0.04 ^c .
p-Dichlorobenzene	0.45 ± 0.05	not available	not available.

^a Reference 3, McClenny, J. Environ. Monit. 7:248–256. Based on 24-hour duration.

^b Reference 24, BS EN 14662–4:2005 (incorporated by reference—see § 63.14). Based on 14-day duration.

^c Reference 25, ISO 16017–2:2003(E) (incorporated by reference—see § 63.14). Based on 14-day duration.

13.0 Method Performance

The performance of this procedure for VOC not listed in Table 12.1 is determined using the procedure in Addendum A of this Method or by one of the following national/international standard methods: ISO 16017–2:2003(E), ASTM D6196–03 (Reapproved 2009), or BS EN 14662–4:2005 (all incorporated by reference—see § 63.14).

13.1 The valid range for measurement of VOC is approximately 0.5 $\mu\text{g}/\text{m}^3$ to 5 mg/m^3 in air, collected over a 14-day sampling period. The upper limit of the useful range depends on the split ratio selected (Section 11.3.1) and the dynamic range of the analytical system. The lower limit of the useful range depends on the noise from the analytical instrument detector and on the blank level of target compounds or interfering compounds on the sorbent tube (see Section 13.3).

13.2 Diffusive sorbent tubes compatible with passive sampling and thermal desorption methods have been evaluated at relatively high atmospheric concentrations (*i.e.*, mid-ppb to ppm) and published for use in workplace air and industrial/mobile source emissions (References 15–16, 21–22).

13.3 Best possible detection limits and maximum quantifiable concentrations of air pollutants range from sub-part-per-trillion (sub-ppt) for halogenated species such as CCl_4 and the freons using an electron capture detector (ECD), SIM Mode GC/MS, triple quad MS or GC/TOF MS to sub-ppb for volatile hydrocarbons collected over 72 hours followed by analysis using GC with quadrupole MS operated in the full SCAN mode.

13.3.1 Actual detection limits for atmospheric monitoring vary depending on several key factors. These factors are:

- Minimum artifact levels.
- GC detector selection.
- Time of exposure for passive sorbent tubes.
- Selected analytical conditions, particularly column resolution and split ratio.

14.0 Pollution Prevention

This method involves the use of ambient concentrations of gaseous compounds that pose little or no danger of pollution to the environment.

15.0 Waste Management

Dispose of expired calibration solutions as hazardous materials. Exercise standard laboratory environmental practices to minimize the use and disposal of laboratory solvents.

16.0 References

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17.0 Tables, Diagrams, Flowcharts and Validation Data

TABLE 17.1—SUMMARY OF GC/MS ANALYSIS QUALITY CONTROL PROCEDURES

Parameter	Frequency	Acceptance criteria	Corrective action
Bromofluorobenzene Instrument Tune Performance Check.	Daily ^a prior to sample analysis	Evaluation criteria presented in Section 9.5 and Table 9.2.	(1) Retune and or (2) Perform Maintenance.
Five point calibration bracketing the expected sample concentration.	Following any major change, repair or maintenance or if daily CCV does not meet method requirements. Recalibration not to exceed three months.	(1) Percent Deviation (%DEV) of response factors $\pm 30\%$. (2) Relative Retention Times (RRTs) for target peaks ± 0.06 units from mean RRT.	(1) Repeat calibration sample analysis. (2) Repeat linearity check. (3) Prepare new calibration standards as necessary and repeat analysis.
Calibration Verification (CCV Second source calibration verification check).	Following the calibration curve	The response factor $\pm 30\%$ DEV from calibration curve average response factor.	(1) Repeat calibration check. (2) Repeat calibration curve.
Laboratory Blank Analysis	Daily ^a following bromofluorobenzene and calibration check; prior to sample analysis.	(1) ≤ 0.2 ppbv per analyte or ≤ 3 times the LOD, whichever is greater. (2) Internal Standard (IS) area response $\pm 40\%$ and IS Retention Time (RT) ± 0.33 min. of most recent calibration check.	(1) Repeat analysis with new blank tube. (2) Check system for leaks, contamination. (3) Analyze additional blank.
Blank Sorbent Tube Certification ...	One tube analyzed for each batch of tubes cleaned or 10 percent of tubes whichever is greater.	< 0.2 ppbv per VOC targeted compound or 3 times the LOD, whichever is greater.	Reclean all tubes in batch and re-analyze.
Samples—Internal Standards	All samples	IS area response $\pm 40\%$ and IS RT ± 0.33 min. of most recent calibration validation.	Flag Data for possible invalidation.

^a Every 24 hours.

BILLING CODE 6560-50-P

Method 325 A/B**EXAMPLE FIELD TEST DATA SHEET (FTDS)
AND
CHAIN OF CUSTODY****I. GENERAL INFORMATION**

SITE NAME: _____

SITE LOCATION ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

II. SAMPLING DATA

Sample ID (Tube) #	Sorbent	Sample or blank	Start Date	Start Time	Stop Date	Stop Time	Location (gps)	Ambient Temp. (°F)	Barometric Pressure (in. Hg)

III. CUSTODY INFORMATION

COLLECTED BY: _____

Relinquished to Shipper -

Name: _____ Date: _____ Time _____

Received by Laboratory -

Name _____ Date: _____ Time _____

Sample condition upon receipt: _____

Analysis Required: _____

Comments: _____

Figure 17.1. Example Field Data From and Chain of Custody

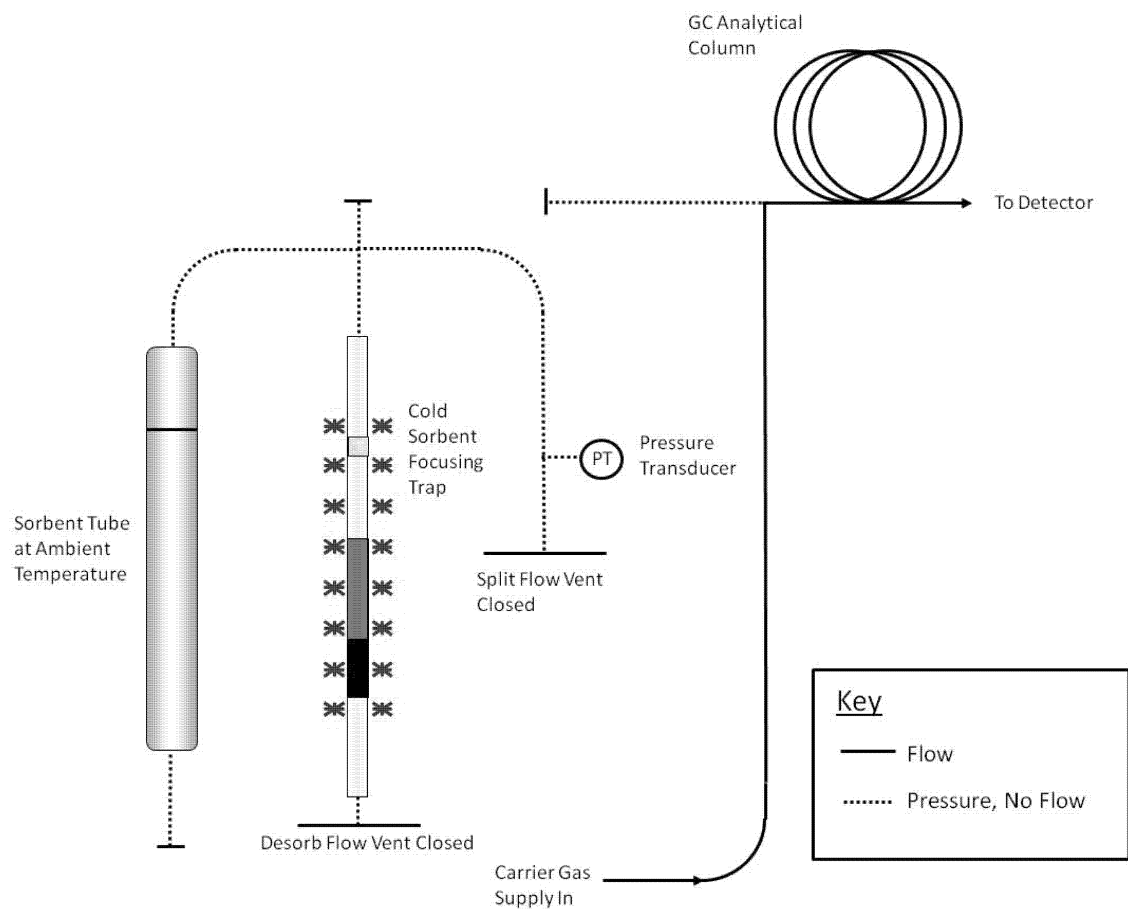


Figure 17.2. Schematic of Thermal Desorption Flow Path During Leak Testing

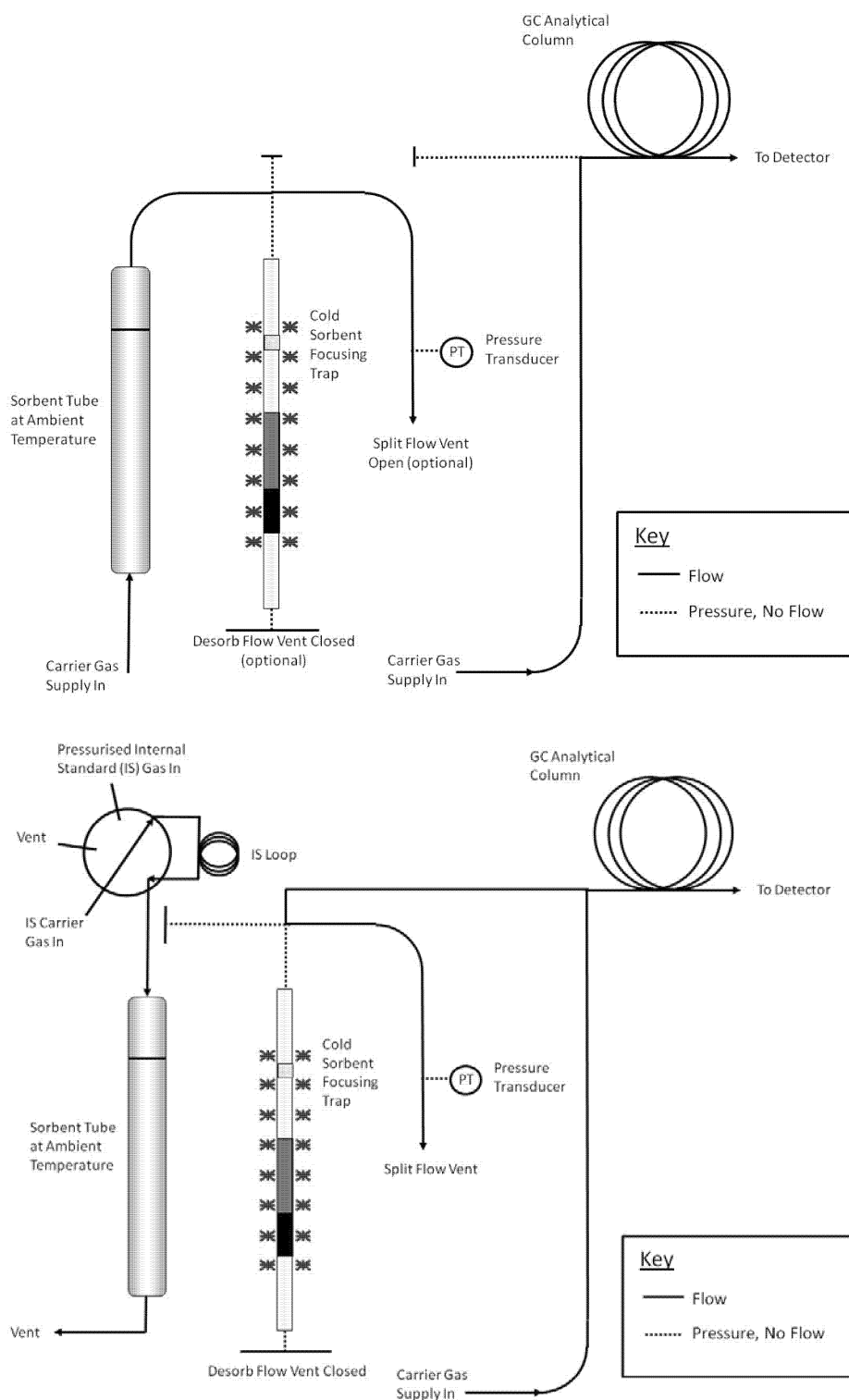


Figure 17.3. Schematic of Thermal Desorption Flow During Purge of Air (Top) and Addition of IS Gas to the Sorbent Tube (Bottom)

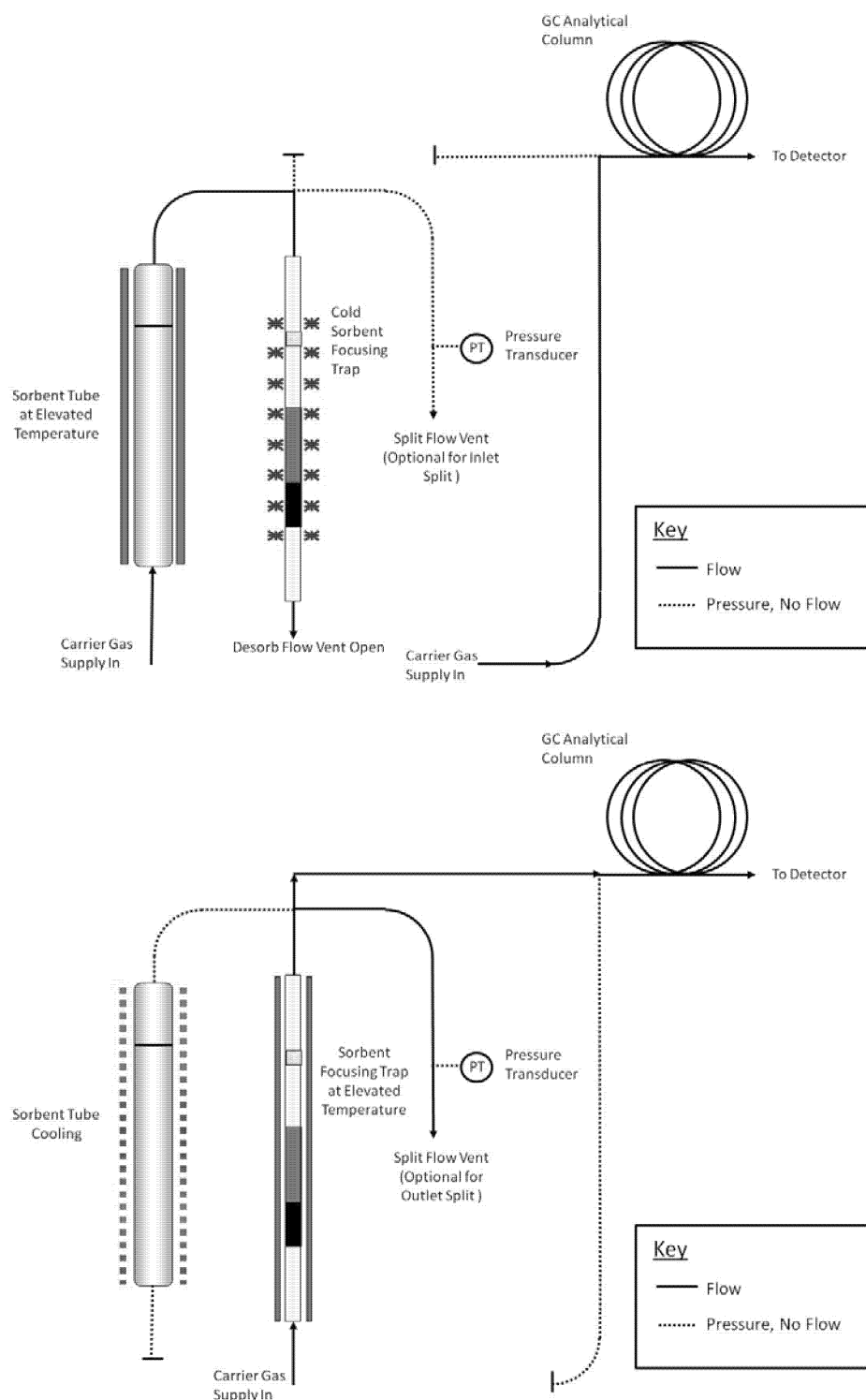


Figure 17.4. Schematic of Thermal Desorption Flow Path During Primary (Tube) Desorption (Top) and Secondary (Trap) Desorption and Transfer to the GC (Bottom)

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ADDENDUM A to Method 325B—Method 325 Performance Evaluation

A.1 Scope and Application

A.1.1 To be measured by Methods 325A and 325B, each new target volatile organic compound (VOC) or sorbent that is not listed in Table 12.1 must be evaluated by exposing

the selected sorbent tube to a known concentration of the target compound(s) in an exposure chamber following the procedure in this Addendum or by following the procedures in the national/international standard methods: ISO 16017-2:2003(E),

ASTM D6196-03 (Reapproved 2009), or BS EN 14662-4:2005 (all incorporated by reference—see § 63.14), or reported in peer-reviewed open literature.

A.1.2 You must determine the uptake rate and the relative standard deviation compared to the theoretical concentration of volatile material in the exposure chamber for each of the tests required in this method. If data that meet the requirement of this Addendum are available in the peer reviewed open literature for VOCs of interest collected on your passive sorbent tube configuration, then such data may be submitted in lieu of the testing required in this Addendum.

A.1.3 You must expose sorbent tubes in a test chamber to parts per trillion by volume (pptv) and low parts per billion by volume (ppbv) concentrations of VOCs in humid atmospheres to determine the sorbent tube uptake rate and to confirm compound capture and recovery.

A.2 Summary of Method

Note: The technique described here is one approach for determining uptake rates for new sorbent/sorbate pairs. It is equally valid to follow the techniques described in any one of the following national/international standards methods: ISO 16017-2:2003(E), ASTM D6196-03 (Reapproved 2009), or BS EN 14662-4:2005 (all incorporated by reference—see § 63.14).

A.2.1 Known concentrations of VOC are metered into an exposure chamber containing sorbent tubes filled with media selected to capture the volatile organic compounds of interest (see Figure A.1 and A.2 for an example of the exposure chamber and sorbent tube retaining rack). VOC are diluted with humid air and the chamber is allowed to equilibrate for 6 hours. Clean passive sampling devices are placed into the chamber and exposed for a measured period of time. The passive uptake rate of the passive sampling devices is determined using the standard and dilution gas flow rates. Chamber concentrations are confirmed with whole gas sample collection and analysis or direct interface volatile organic compound measurement methods.

A.2.2 An exposure chamber and known gas concentrations must be used to challenge and evaluate the collection and recovery of target compounds from the sorbent and tube selected to perform passive measurements of VOC in atmospheres.

A.3 Definitions

- A.3.1 *cc* is cubic centimeter.
- A.3.2 *ECD* is electron capture detector.
- A.3.3 *FID* is flame ionization detector.
- A.3.4 *LED* is light-emitting diode.
- A.3.5 *MFC* is mass flow controller.
- A.3.6 *MFM* is mass flow meter.
- A.3.7 *min* is minute.
- A.3.8 *ppbv* is parts per billion by volume.
- A.3.9 *ppmv* is parts per million by volume.
- A.3.10 *PSD* is passive sampling device.
- A.3.11 *psig* is pounds per square inch gauge.
- A.3.12 *RH* is relative humidity.
- A.3.13 *VOC* is volatile organic compound.

A.4 Interferences

A.4.1 VOC contaminants in water can contribute interference or bias results high. Use only distilled, organic-free water for dilution gas humidification.

A.4.2 Solvents and other VOC-containing liquids can contaminate the exposure chamber. Store and use solvents and other VOC-containing liquids in the exhaust hood when exposure experiments are in progress to prevent the possibility of contamination of VOCs into the chamber through the chamber's exhaust vent.

Note: Whenever possible, passive sorbent evaluation should be performed in a VOC free laboratory.

A.4.3 PSDs should be handled by personnel wearing only clean, white cotton or powder free nitrile gloves to prevent contamination of the PSDs with oils from the hands.

A.4.4 This performance evaluation procedure is applicable to only volatile materials that can be measured accurately with direct interface gas chromatography or whole gas sample collection, concentration and analysis. Alternative methods to confirm the concentration of volatile materials in exposure chambers are subject to Administrator approval.

A.5 Safety

A.5.1 This procedure does not address all of the safety concerns associated with its use. It is the responsibility of the user of this standard to establish appropriate field and laboratory safety and health practices and determine the applicability of regulatory limitations prior to use.

A.5.2 Laboratory analysts must exercise appropriate care in working with high-pressure gas cylinders.

A.6 Equipment and Supplies

A.6.1 You must use an exposure chamber of sufficient size to simultaneously expose a minimum of eight sorbent tubes.

A.6.2 Your exposure chamber must not contain VOC that interfere with the compound under evaluation. Chambers made of glass and/or stainless steel have been used successfully for measurement of known concentration of selected VOC compounds.

A.6.3 The following equipment and supplies are needed:

- Clean, white cotton or nitrile gloves;
- Conditioned passive sampling device tubes and diffusion caps; and
- NIST traceable high resolution digital gas mass flow meters (MFMs) or flow controllers (MFCs).

A.7 Reagents and Standards

A.7.1 You must generate an exposure gas that contains between 35 and 75 percent relative humidity and a concentration of target compound(s) within 2 to 5 times the concentration to be measured in the field.

A.7.2 Target gas concentrations must be generated with certified gas standards and diluted with humid clean air. Dilution to reach the desired concentration must be done with zero grade air or better.

A.7.3 The following reagents and standards are needed:

- Distilled water for the humidification;

- VOC standards mixtures in high-pressure cylinder certified by the supplier (**Note:** The accuracy of the certified standards has a direct bearing on the accuracy of the measurement results. Typical vendor accuracy is ± 5 percent accuracy but some VOC may only be available at lower accuracy (e.g., acrolein at 10 percent)); and

- Purified dilution air containing less than 0.2 ppbv of the target VOC.

A.8 Sample Collection, Preservation and Storage

A.8.1 You must use certified gas standards diluted with humid air. Generate humidified air by adding distilled organic free water to purified or zero grade air. Humidification may be accomplished by quantitative addition of water to the air dilution gas stream in a heated chamber or by passing purified air through a humidifying bubbler. You must control the relative humidity in the test gas throughout the period of passive sampler exposure.

Note: The RH in the exposure chamber is directly proportional to the fraction of the purified air that passes through the water in the bubbler before entering the exposure chamber. Achieving uniform humidification in the proper range is a trial-and-error process with a humidifying bubbler. You may need to heat the bubbler to achieve sufficient humidity. An equilibration period of approximately 15 minutes is required following each adjustment of the air flow through the humidifier. Several adjustments or equilibration cycles may be required to achieve the desired RH level.

Note: You will need to determine both the dilution rate and the humidification rate for your design of the exposure chamber by trial and error before performing method evaluation tests.

A.8.2 Prepare and condition sorbent tubes following the procedures in Method 325B Section 7.0.

A.8.3 You must verify that the exposure chamber does not leak.

A.8.4 You must complete two evaluation tests using a minimum of eight passive sampling tubes in each test with less than 5-percent depletion of test analyte by the samplers.

A.8.4.1 Perform at least one evaluation at two to five times the estimated analytical detection limit or less.

A.8.4.2 Perform second evaluation at a concentration equivalent to the middle of the analysis calibration range.

A.8.5 You must evaluate the samplers in the test chamber operating between 35 percent and 75 percent RH, and at 25 ± 5 °C. Allow the exposure chamber to equilibrate for 6 hours before starting an evaluation.

A.8.6 The flow rate through the chamber must be ≤ 0.5 meter per second face velocity across the sampler face.

A.8.7 Place clean, ready to use sorbent tubes into the exposure chamber for predetermined amounts of time to evaluate collection and recovery from the tubes. The exposure time depends on the concentration of volatile test material in the chamber and the detection limit required for the sorbent tube sampling application. Exposure time

should match sample collection time. The sorbent tube exposure chamber time may not be less than 24 hours and should not be longer than 2 weeks.

A.8.7.1 To start the exposure, place the clean PSDs equipped with diffusion caps on the tube inlet into a retaining rack.

A.8.7.2 Place the entire retaining rack inside the exposure chamber with the diffusive sampling end of the tubes facing

into the chamber flow. Seal the chamber and record the exposure start time, chamber RH, chamber temperature, PSD types and numbers, orientation of PSDs, and volatile material mixture composition (see Figure A.2).

A.8.7.3 Diluted, humidified target gas must be continuously fed into the exposure chamber during cartridge exposure. Measure

the flow rate of target compound standard gas and dilution air to an accuracy of 5 percent.

A.8.7.4 Record the time, temperature, and RH at the beginning, middle, and end of the exposure time.

A.8.7.5 At the end of the exposure time, remove the PSDs from the exposure chamber. Record the exposure end time, chamber RH, and temperature.

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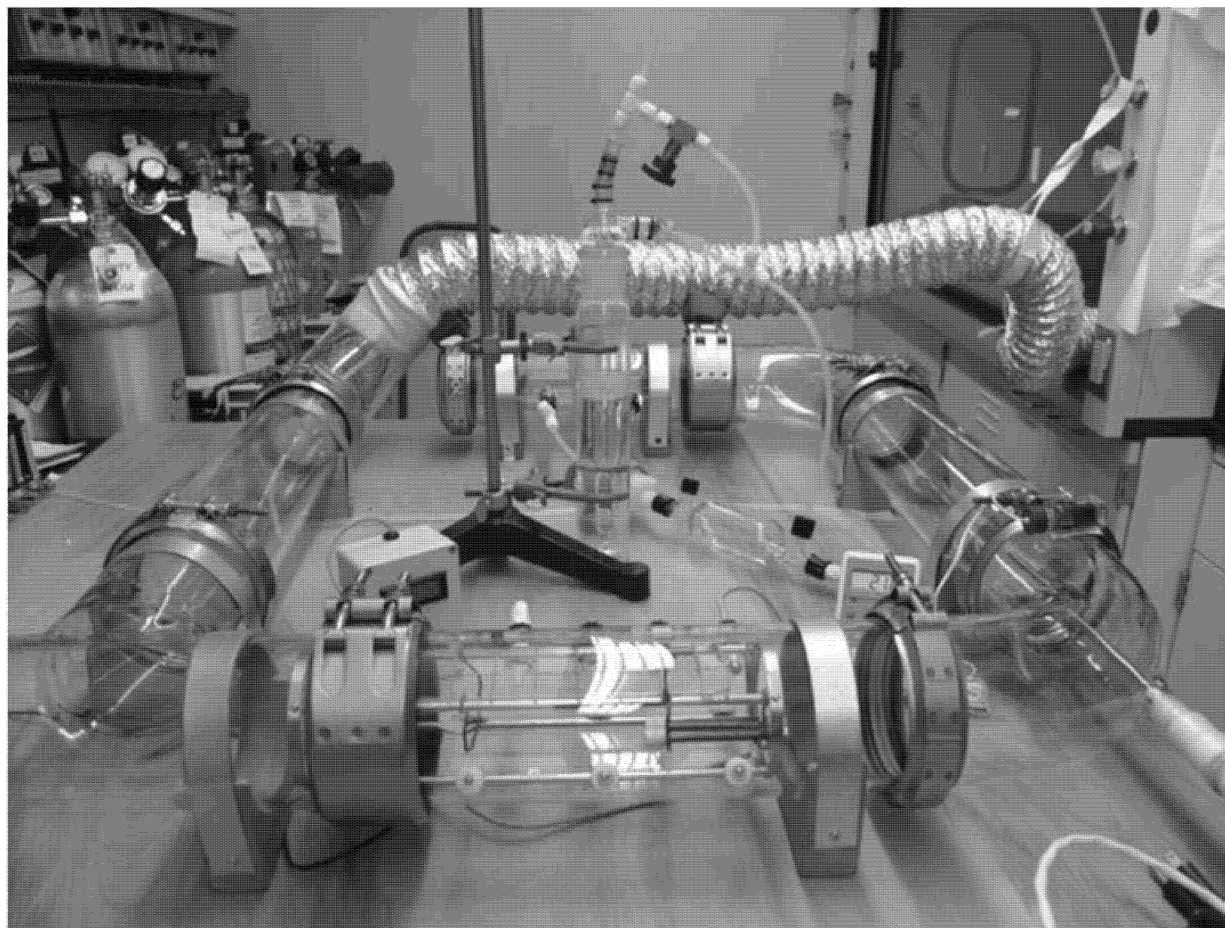
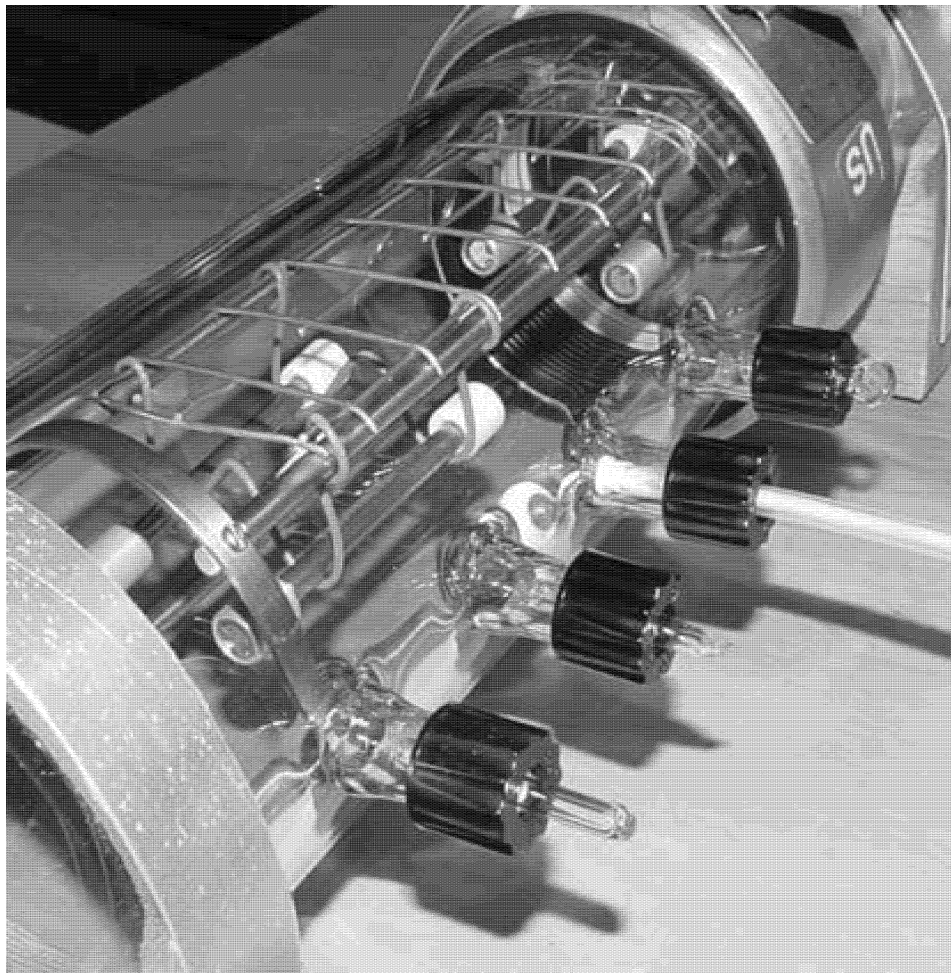


Figure A.1. Example Sorbent Tube Exposure Chamber



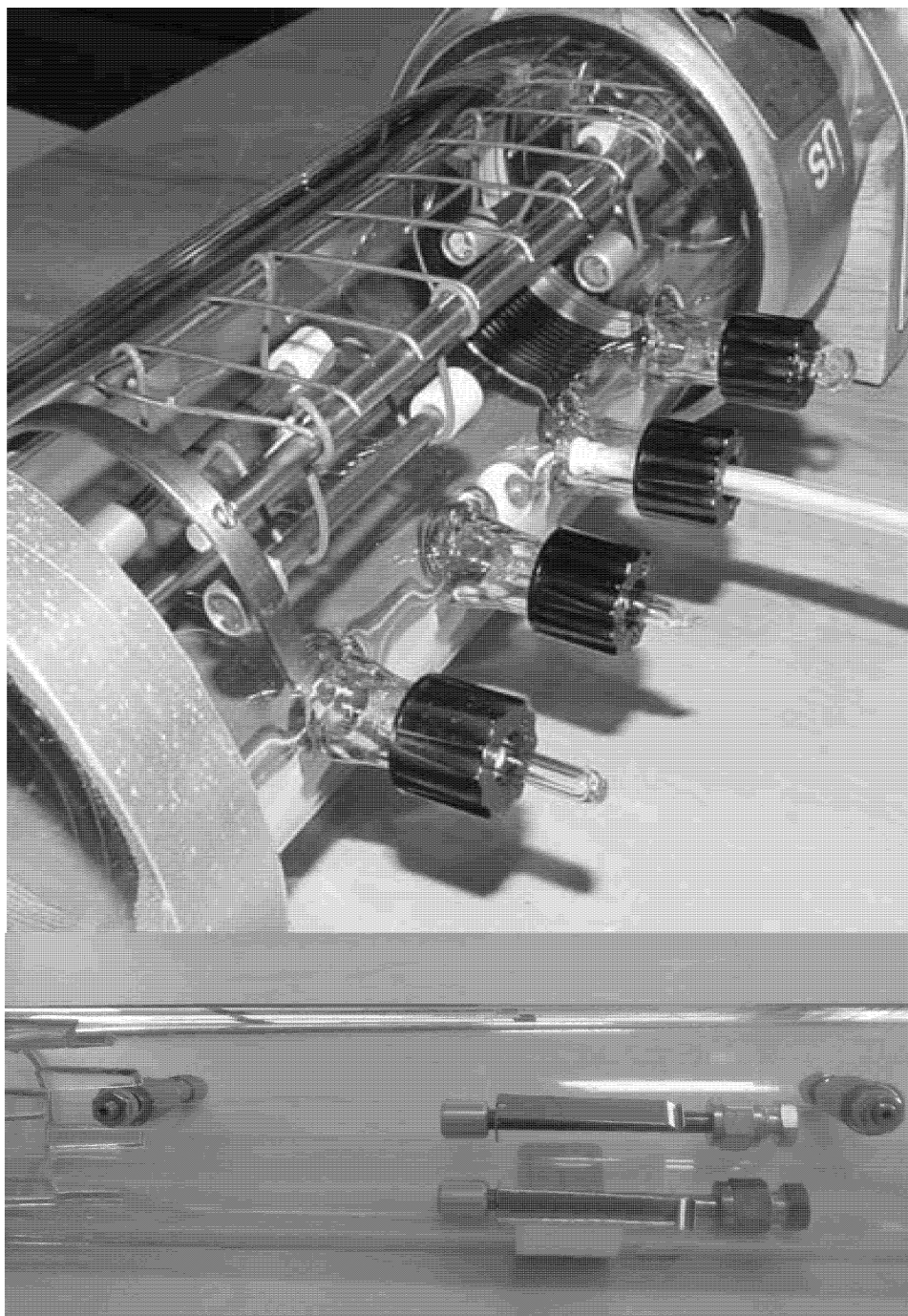


Figure A.2. Example Tube Retaining Rack in Exposure Chamber

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A.9 Quality Control

A.9.1 Monitor and record the exposure chamber temperature and RH during PSD exposures.

A.9.2 Measure the flow rates of standards and purified humidified air immediately following PSD exposures.

A.10 Calibration and Standardization

A.10.1 Follow the procedures described in Method 325B Section 10.0 for calibration.

A.10.2 Verify chamber concentration by direct injection into a gas chromatograph calibrated for the target compound(s) or by collection of an integrated SUMMA canister followed by analysis using a preconcentration gas chromatographic method such as EPA Compendium Method TO-15, Determination of VOCs in Air Collected in Specially-Prepared Canisters and Analyzed By GC/MS.

A.10.2.1 To use direct injection gas chromatography to verify the exposure chamber concentration, follow the procedures in Method 18 of 40 CFR part 60,

Appendix A-6. The method ASTM D6420-99 (Reapproved 2010) (incorporated by reference—see § 63.14) is an acceptable alternative to EPA Method 18 of 40 CFR part 60).

Note: Direct injection gas chromatography may not be sufficiently sensitive for all compounds. Therefore, the whole gas preconcentration sample and analysis method may be required to measure at low concentrations.

A.10.2.2 To verify exposure chamber concentrations using SUMMA canisters,

prepare clean canister(s) and measure the concentration of VOC collected in an integrated SUMMA canister over the period used for the evaluation (minimum 24 hours). Analyze the TO-15 canister sample following EPA Compendium Method TO-15.

A.10.2.3 Compare the theoretical concentration of volatile material added to the test chamber to the measured concentration to confirm the chamber operation. Theoretical concentration must agree with the measured concentration within 30 percent.

A.11 Analysis Procedure

Analyze the sorbent tubes following the procedures described in Section 11.0 of Method 325B.

A.12 Recordkeeping Procedures for Sorbent Tube Evaluation

Keep records for the sorbent tube evaluation to include at a minimum the following information:

A.12.1 Sorbent tube description and specifications.

A.12.2 Sorbent material description and specifications.

A.12.3 Volatile analytes used in the sampler test.

A.12.4 Chamber conditions including flow rate, temperature, and relative humidity.

A.12.5 Relative standard deviation of the sampler results at the conditions tested.

A.12.6 95 percent confidence limit on the sampler overall accuracy.

A.12.7 The relative accuracy of the sorbent tube results compared to the direct

chamber measurement by direct gas chromatography or SUMMA canister analysis.

A.13 Method Performance

A.13.1 Sorbent tube performance is acceptable if the relative accuracy of the passive sorbent sampler agrees with the active measurement method by ± 10 percent at the 95 percent confidence limit and the uptake ratio is equal to greater than 0.5 mL/min (1 ng/ppm-min).

Note: For example, there is a maximum deviation comparing Perkin-Elmer passive type sorbent tubes packed with Carboxpack™ X of 1.3 to 10 percent compared to active sampling using the following uptake rates.

	1,3-butadiene uptake rate mL/min	Estimated detection limit (2 week)	Benzene uptake rates mL/min	Estimated detection limit (2 week)
Carboxpack™ X (2 week)	0.61 $\pm$ 0.11 ^a	0.1 ppbv	0.67 ^a	0.05 ppbv

^a McClenny, W.A., K.D. Oliver, H.H. Jacumin, Jr., E.H. Daughtrey, Jr., D.A. Whitaker. 2005. 24 h diffusive sampling of toxic VOCs in air onto Carboxpack™ X solid adsorbent followed by thermal desorption/GC/MS analysis—laboratory studies. J. Environ. Monit. 7:248–256.

A.13.2 Data Analysis and Calculations for Method Evaluation

A.13.2.1 Calculate the theoretical concentration of VOC standards using Equation A.1.

$$C_f = \left[\frac{FR_i}{FR_i + FR_a} \right] \times C_s \quad \text{Eq. A.1}$$

Where:

C_f = The final concentration of standard in the exposure chamber (ppbv).

FR_i = The flow rate of the target compound I (mL/min).

FR_i = The flow rate of all target compounds from separate if multiple cylinders are used (mL/min).

FR_a = The flow rate of dilution air plus moisture (mL/min).

C_s = The concentration of target compound in the standard cylinder (parts per million by volume).

A.13.2.3 Determine the uptake rate of the target gas being evaluated using Equation A.2.

$$U = \frac{M_x}{C_e \times T_i} \quad \text{Eq. A.2}$$

Where:

M_x = The mass of analyte measured on the sampling tube (ng).

C_e = The theoretical exposure chamber concentration (ng/mL).

T_i = The exposure time (minutes).

A.13.2.4 Estimate the variance (relative standard deviation (RSD)) of the inter-sampler results at each condition tested using Equation A.3. RSD for the sampler is

estimated by pooling the variance estimates from each test run.

$$S^2 = \sum_i^n \frac{(X_i - \bar{X})^2}{n-1} \quad \text{Eq. A.3}$$

Where:

X_i = The measured mass of analyte found on sorbent tube i .

$\bar{X}$ = The mean value of all X_i .

n = The number of measurements of the analyte.

A.13.2.4 Determine the percent relative standard deviation of the inter-sampler results using Equation A.4.

$$\%RSD_x = 100 \times \frac{\sqrt{S^2}}{\bar{X}} \quad \text{Eq. A.4}$$

A.13.2.5 Determine the 95 percent confidence interval for the sampler results using Equation A.5. The confidence interval

is determined based on the number of test runs performed to evaluate the sorbent tube and sorbent combination. For the minimum

test requirement of eight samplers tested at two concentrations, the number of tests is 16 and the degrees of freedom are 15.

$$\Delta_{95\%} = \frac{\%RSD \times t_{0.95} \times f}{\sqrt{n}} \quad \text{Eq. A.5}$$

Where:

$\Delta_{95\%}$ = 95 percent confidence interval.

%RSD = percent relative standard deviation.

$t_{0.95}$ = The Students t statistic for f degrees of freedom at 95 percent confidence.

f = The number of degrees of freedom.

n = Number of samples.

A.13.2.6 Determine the relative accuracy of the sorbent tube combination compared to the active sampling results using Equation A.6.

$$RA = \bar{X}_i - \bar{X}_A \pm \Delta_{95\%} \quad \text{Eq. A.6}$$

Where:

RA = Relative accuracy.

$\bar{X}_i$ = The mean value of all X_i .

$\bar{X}_i$ = The average concentration of analyte measured by the active measurement method.

$\Delta_{95\%}$ = 95 percent confidence interval.

A.14 Pollution Prevention

This method involves the use of ambient concentrations of gaseous compounds that post little or no pollution to the environment.

A.15 Waste Management

Expired calibration solutions should be disposed of as hazardous materials.

A.16 References

1. ISO TC 146/SC 02 N 361 Workplace atmospheres—Protocol for evaluating the performance of diffusive samplers.

[FR Doc. 2015–26486 Filed 11–30–15; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the South Atlantic Ocean, January to March 2016; System of Records; Notice

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648-XE291

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the South Atlantic Ocean, January to March 2016

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (Lamont-Doherty) in collaboration with the National Science Foundation (NSF), for an Incidental Harassment Authorization (Authorization) to take marine mammals, by harassment only, incidental to conducting a marine geophysical (seismic) survey in the South Atlantic Ocean, January through March 2016. The proposed dates for this action would be early January 2016 through March 31, 2016, to account for minor deviations due to logistics and weather. Per the Marine Mammal Protection Act, we are requesting comments on our proposal to issue an Authorization to Lamont-Doherty to incidentally take, by Level B harassment, 38 species of marine mammals during the specified activity and to incidentally take, by Level A harassment, 16 species of marine mammals. Although considered unlikely, any Level A harassment potentially incurred would be expected to be in the form of some smaller degree of permanent hearing loss due in part to the required monitoring measures for detecting marine mammals and required mitigation measures for power downs or shut downs of the airgun array if any animal is likely to enter the Level A exclusion zone. NMFS does not expect mortality or complete deafness of marine mammals to result from this survey.

DATES: NMFS must receive comments and information on or before December 31, 2015.

ADDRESSES: Address comments on the application to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is ITP.Cody@noaa.gov.

noaa.gov. Please include 0648-XE291 in the subject line. Comments sent via email to ITP.Cody@noaa.gov, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record, and NMFS will post them to <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of Lamont-Doherty's application, NSF's draft environmental analysis, NMFS' draft Environmental Assessment, and a list of the references used in this document, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm>.

Information in Lamont-Doherty's application, NSF's draft environmental analysis, NMFS' draft Environmental Assessment and this notice collectively provide the environmental information related to the proposed issuance of the Authorization for public review and comment.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427-8401.

SUPPLEMENTARY INFORMATION:**Background**

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization shall be granted for the incidental taking of small numbers of marine mammals if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on

the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat (*i.e.*, mitigation); and requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On July 29, 2015, NMFS received an application from Lamont-Doherty requesting that NMFS issue an Authorization for the take of marine mammals, incidental to Texas A&M University and the University of Texas conducting a seismic survey in the South Atlantic Ocean, January through March 2016. Following the initial application submission, Lamont-Doherty submitted a revised application with revised take estimates. NMFS considered the revised application adequate and complete on October 30, 2015.

Lamont-Doherty proposes to conduct a two-dimensional (2-D), seismic survey on the R/V *Marcus G. Langseth* (*Langseth*), a vessel owned by NSF and operated on its behalf by Columbia University's Lamont-Doherty in international waters in the South Atlantic Ocean approximately 1,938 kilometers (km) (1,232 miles [mi]) southeast of the west coast of Brazil for approximately 22 days. The following specific aspect of the proposed activity has the potential to take marine mammals: Increased underwater sound generated during the operation of the seismic airgun array. We anticipate that take, by Level B harassment, of 38 species of marine mammals could result from the specified activity. Although unlikely, NMFS also anticipates that a small level of take by Level A harassment of 16 species of marine

mammals could occur during the proposed survey.

Description of the Specified Activity

Overview

Lamont-Doherty plans to use one source vessel, the *Langseth*, an array of 36 airguns as the energy source, a receiving system of seven ocean bottom seismometers (OBS), and a single 8-kilometer (km) hydrophone streamer. In addition to the operations of the airguns, Lamont-Doherty intends to operate a multibeam echosounder and a sub-bottom profiler continuously throughout the proposed survey. However, Lamont-Doherty will not operate the multibeam echosounder and sub-bottom profiler during transits to and from the survey area and in between transits to each of the five OBS tracklines (*i.e.*, when the airguns are not operating).

The purpose of the survey is to collect and analyze seismic refraction data from the Mid-Atlantic Ridge westward to the

Rio Grande Rise to study the evolution of the South Atlantic Ocean crust on million-year timescales and the evolution and stability of low-spreading ridges over time. NMFS refers the public to Lamont-Doherty's application (see page 3) for more detailed information on the proposed research objectives.

Dates and Duration

Lamont-Doherty proposes to conduct the seismic survey for approximately 42 days, which includes approximately 22 days of seismic surveying with 10 days of OBS deployment and retrieval. The proposed study (*e.g.*, equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) would include approximately 528 hours of airgun operations (*i.e.*, 22 days over 24 hours). Some minor deviation from Lamont-Doherty's requested dates of January through March 2016 is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard.

Thus, the proposed Authorization, if issued, would be effective from early January through March 31, 2016.

NMFS refers the reader to the Detailed Description of Activities section later in this notice for more information on the scope of the proposed activities.

Specified Geographic Region

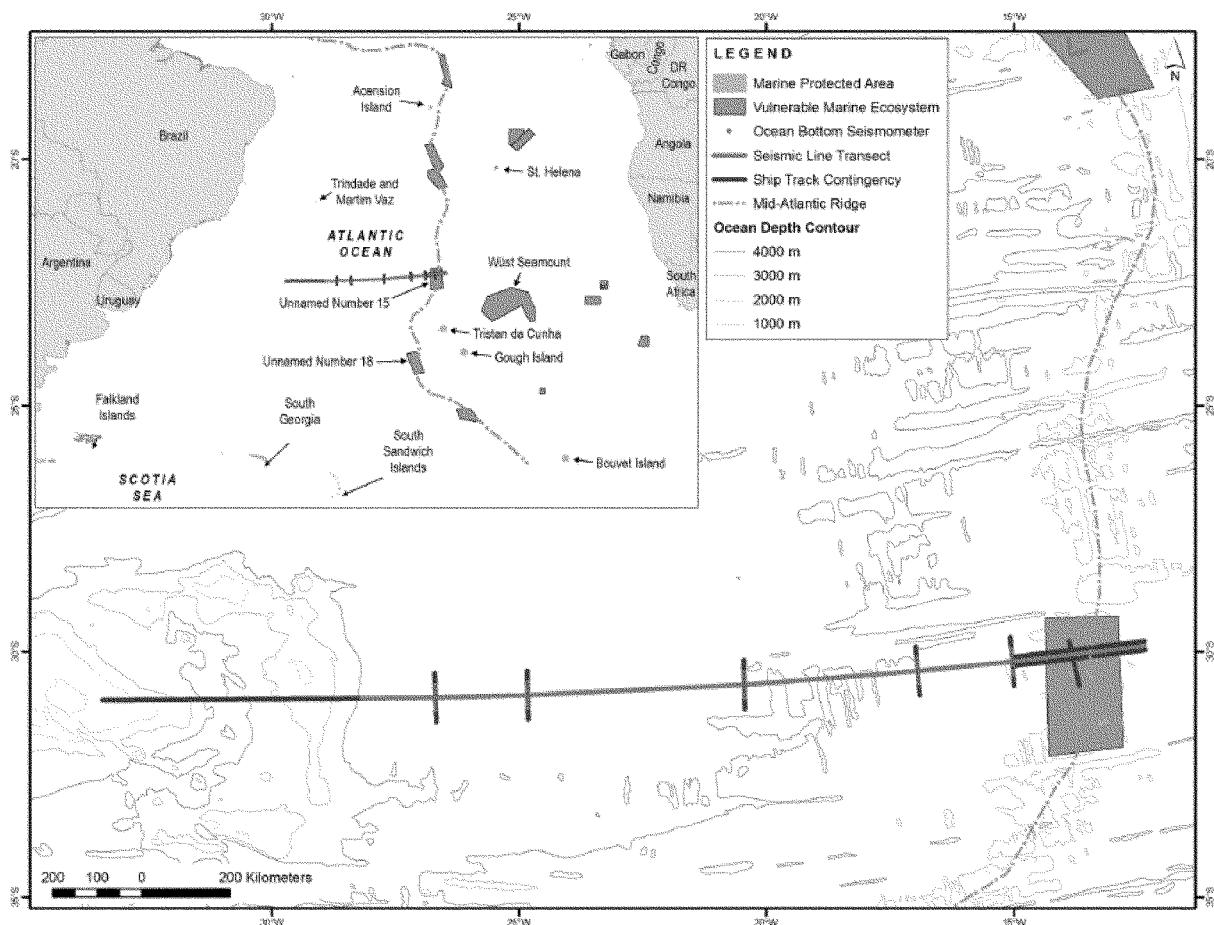
Lamont-Doherty proposes to conduct the proposed seismic survey in the South Atlantic Ocean, located approximately between 10–35° W, 27–33° S (see Figure 1). Water depths in the survey area range from approximately 1,150 to 4,800 meters (m) (3,773 feet [ft] to 2.98 miles [mi]).

Principal and Collaborating Investigators

The proposed survey's principal investigators are Drs. R. Reece and R. Carlson (Texas A&M University) and Dr. G. Christeson (University of Texas at Austin).

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Figure 1. Location of the proposed seismic survey in the South Atlantic Ocean, January through March 2016.



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Detailed Description of the Specified Activities*Transit Activities*

The *Langseth* would depart and return from Montevideo, Uruguay, and transit to the survey area. Some minor deviations with the transit schedule and port locations are possible depending on logistics and weather.

Vessel Specifications

The survey would involve one source vessel, the R/V *Langseth*. The *Langseth*, owned by NSF and operated by Lamont-Doherty, is a seismic research vessel with a quiet propulsion system that avoids interference with the seismic signals emanating from the airgun array. The vessel is 71.5 m (235 ft) long; has a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834 pounds. It has two 3,550 horsepower (hp) Bergen BRG-6 diesel engines that drive two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800-hp bowthruster, which is off during seismic acquisition.

The *Langseth's* speed during seismic operations would be approximately 4.5 knots (kt) (8.3 km/hour [hr]; 5.1 miles per hour [mph]). The vessel's cruising speed outside of seismic operations is approximately 10 kt (18.5 km/hr; 11.5 mph). While the *Langseth* tows the airgun array, its turning rate is limited to five degrees per minute. Thus, the *Langseth's* maneuverability is limited during operations while it tows the streamer.

The vessel also has an observation tower from which protected species visual observers (observers) would watch for marine mammals before and during the proposed seismic acquisition operations. When stationed on the observation platform, the observer's eye level will be approximately 21.5 m (71 ft) above sea level providing the observer an unobstructed view around the entire vessel.

Data Acquisition Activities

The proposed survey would cover a total of approximately 3,263 km (2,028 mi) of transect lines. The proposed survey is one continuous transect line with transect lines that cross the main line at six locations.

During the survey, the *Langseth* would deploy 36 airguns as an energy source with a total volume of 6,600 cubic inches (in³). The receiving system would consist of seven OBSs deployed at each perpendicular trackline site and a single 8-km (5-mi) hydrophone

streamer. As the *Langseth* tows the airgun array along the survey lines, the OBSs and hydrophone streamer would receive the returning acoustic signals and transfer the data to the on-board processing system.

Seismic Airguns

The airguns are a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 220 in³, with a firing pressure of 1,950 pounds per square inch. The dominant frequency components range from zero to 188 Hertz (Hz).

During the survey, Lamont-Doherty would plan to use the full array with most of the airguns in inactive mode. The *Langseth* would tow the array at a depth of 9 m (29.5 ft) resulting in a shot interval of approximately 65 seconds (s) (approximately 150 m; 492 ft) for the leg with the OBS lines and a shot interval of approximately 22 s (approximately 50 m; 164 ft) for the multichannel seismic survey lines with the hydrophone streamer. During acquisition the airguns will emit a brief (approximately 0.1 s) pulse of sound. During the intervening periods of operations, the airguns are silent.

Airguns function by venting high-pressure air into the water, which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor, and there is also a reduction in the amount of sound transmitted in the near horizontal direction. The airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun subarrays on the *Langseth* range from 240 to 247 decibels (dB) re: 1 μ Pa_(peak to peak). (We express sound pressure level as the ratio of a measured sound pressure and a reference pressure level. The commonly used unit for sound pressure is dB and the commonly used reference pressure level in underwater acoustics is 1 microPascal (μ Pa)). Briefly, the effective source levels for horizontal propagation are lower than source levels for downward propagation. We refer the reader to Lamont-Doherty's Authorization application and NSF's Environmental Analysis for additional information on downward and horizontal sound propagation related to the airgun's source levels.

Additional Acoustic Data Acquisition Systems

Multibeam Echosounder: The *Langseth* will operate a Kongsberg EM 122 multibeam echosounder concurrently during airgun operations to map characteristics of the ocean floor. However, as stated earlier, Lamont-Doherty will not operate the multibeam echosounder during transits to and from the survey areas (*i.e.*, when the airguns are not operating).

The hull-mounted echosounder emits brief pulses of sound (also called a ping) (10.5 to 13.0 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1 or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μ Pa.

Each ping consists of eight (in water greater than 1,000 m; 3,280 ft) or four (in water less than 1,000 m; 3,280 ft) successive, fan-shaped transmissions, from two to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. Continuous wave pulses increase from 2 to 15 ms long in water depths up to 2,600 m (8,530 ft). The echosounder uses frequency-modulated chirp pulses up to 100-ms long in water greater than 2,600 m (8,530 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2-ms gaps between the pulses for successive sectors.

Sub-bottom Profiler: The *Langseth* will also operate a Knudsen Chirp 3260 sub-bottom profiler concurrently during airgun and echosounder operations to provide information about the sedimentary features and bottom topography. As with the case of the echosounder, Lamont-Doherty will not operate the sub-bottom profiler during transits to and from the survey areas (*i.e.*, when the airguns are not operating).

The profiler is capable of reaching depths of 10,000 m (6.2 mi). The dominant frequency component is 3.5 kHz and a hull-mounted transducer on the vessel directs the beam downward in a 27° cone. The power output is 10 kilowatts (kW), but the actual maximum radiated power is three kilowatts or 222 dB re: 1 μ Pa. The ping duration is up to 64 ms with a pulse interval of one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause.

Ocean Bottom Seismometers: The *Langseth* would deploy a total of seven OBS at a 10-km (6.2-mi) spacing interval at each crossline site and would carry out operations in a west-to-east transit line. For each OBS profile site, the

Langseth crew would deploy seven OBSs on the sea floor, would survey the line, and then would recover the source array and the OBSs before moving to the next line.

Lamont-Doherty proposes to use one of two types of OBSs: The Woods Hole Oceanographic Institute (WHOI) or the Scripps Institution of Oceanography (SIO) OBS.

The WHOI D2 OBS is approximately 0.9 m (2.9 ft) high with a maximum diameter of 50 centimeters (cm) (20 inches [in]). An anchor, made of a rolled steel bar grate that measures approximately 2.5 by 30.5 by 38.1 cm (1 by 12 by 15 in) and weighs 23 kilograms (kg) (51 pounds [lbs]) would anchor the seismometer to the seafloor. The SIO L-Cheapo OBS is approximately 0.9 m (2.9 ft) high with a maximum diameter of 97 centimeters (cm) (3.1 ft). The SIO anchors consist of 36-kg (79-lb) iron gates and measure approximately 7 by 91 by 91.5 cm (3 by 36 by 36 inches).

After the *Langseth* completes the proposed seismic survey, an acoustic signal would trigger the release of each

seismometer from the ocean floor. The *Langseth's* acoustic release transponder, located on the vessel, communicates with the seismometer at a frequency of 9 to 13 kilohertz (kHz). The maximum source level of the release signal is 242 dB re: 1 μ Pa with an 8-millisecond pulse length. The received signal activates the seismometer's double burn-wire release assembly which then releases the seismometer from the anchor. The seismometer then floats to the ocean surface for retrieval by the *Langseth*. The steel grate anchors from each of the seismometers would remain on the seafloor.

The *Langseth* crew would deploy the seismometers one-by-one from the stern of the vessel while onboard protected species observers will alert them to the presence of marine mammals and recommend ceasing deploying or recovering the seismometers to avoid potential entanglement with marine mammal.

Hydrophone Streamer: Lamont-Doherty would deploy the single hydrophone streamer for multichannel

operations after concluding the OBS operations. As the *Langseth* tows the airgun array along the survey lines, the streamer transfers the data to the on-board processing system.

Description of Marine Mammals in the Area of the Specified Activity

Table 1 in this notice provides the following: All marine mammal species with possible or confirmed occurrence in the proposed activity area; information on those species' regulatory status under the MMPA and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); abundance; local occurrence and range; and seasonality in the proposed activity area. Based on the best available information, NMFS expects that there may be a potential for certain cetacean and pinniped species to occur within the survey area (*i.e.*, potentially be taken) and have included additional information for these species in Table 1 of this notice. NMFS will carry forward analyses on the species listed in Table 1 later in this document.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED SURVEY AREAS WITHIN THE SOUTH ATLANTIC OCEAN
[January through March 2016]

Species	Regulatory status ^{1,2}	Species abundance ³	Local occurrence and range ⁴	Season ⁵
Antarctic minke whale (<i>Balaenoptera bonaerensis</i>) ...	MMPA-NC, ESA-NL	⁶ 515,000	Uncommon, shelf, pelagic	Winter.
Blue whale (<i>B. musculus</i>)	MMPA-D, ESA-EN	⁷ 2,300	Rare, coastal, slope, pelagic.	Winter.
Bryde's whale (<i>B. edeni</i>)	MMPA-NC, ESA-NL	⁸ 43,633	Rare, coastal, pelagic	Winter.
Common (dwarf) minke whale (<i>B. acutorostrata</i>)	MMPA-NC, ESA-NL	⁶ 515,000	Uncommon, shelf, pelagic	Winter.
Fin whale (<i>B. physalus</i>)	MMPA-D, ESA-EN	⁹ 22,000	Uncommon, Coastal, pelagic.	Fall.
Humpback whale (<i>Megaptera novaeangliae</i>)	MMPA-D, ESA-EN	¹⁰ 42,000	Uncommon, Coastal, shelf, pelagic.	Winter.
Sei whale (<i>B. borealis</i>)	MMPA-D, ESA-EN	¹¹ 10,000	Uncommon, Shelf edges, pelagic.	Winter.
Southern right whale (<i>Eubalaena australis</i>)	MMPA-D, ESA-EN	¹² 12,000	Uncommon, Coastal, shelf	Winter.
Sperm whale (<i>Physeter macrocephalus</i>)	MMPA-D, ESA-EN	¹³ 355,000	Uncommon, Slope, pelagic.	Winter.
Dwarf sperm whale (<i>Kogia sima</i>)	MMPA-NC, ESA-NL	3,785	Rare, Shelf, slope, pelagic	Winter.
Pygmy sperm whale (<i>K. breviceps</i>)	MMPA-NC, ESA-NL	3,785	Rare, Shelf, slope, pelagic	Winter.
Cuvier's beaked whale (<i>Ziphius cavirostris</i>)	MMPA-NC, ESA-NL	¹⁴ 599,300	Uncommon, Slope	Winter.
Andrew's beaked whale (<i>Mesoplodon bowdoini</i>)	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, Pelagic	Winter.
Arnoux's beaked whale (<i>Berardius arnuxii</i>)	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, Pelagic	Winter.
Blainville's beaked whale (<i>M. densirostris</i>)	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, Slope, pelagic	Winter.
Gervais' beaked whale (<i>M. europaeus</i>)	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, pelagic	Winter.
Gray's beaked whale (<i>M. grayi</i>)	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, Pelagic	Winter.
Hector's beaked whale (<i>M. hectori</i>)	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, pelagic	Winter.
Shepherd's beaked whale (<i>Tasmacetus shepherdi</i>) ...	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, pelagic	Winter.
Strap-toothed beaked whale (<i>M. layardii</i>)	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, pelagic	Winter.
True's beaked whale (<i>M. mirus</i>)	MMPA-NC, ESA-NL	7,092	Rare, pelagic	Winter.
Southern bottlenose whale (<i>Hyperoodon planifrons</i>) ..	MMPA-NC, ESA-NL	¹⁴ 599,300	Rare, Coastal, shelf, pelagic.	Winter.
Bottlenose dolphin (<i>Tursiops truncatus</i>)	MMPA-NC, ESA-NL	¹⁵ 600,000	Uncommon, Coastal, pelagic.	Winter.
Rough-toothed dolphin (<i>Steno bredanensis</i>)	MMPA-NC, ESA-NL	271	Uncommon, shelf, pelagic	Winter.
Pantropical spotted dolphin (<i>Stenella attenuata</i>)	MMPA-NC, ESA-NL	3,333	Uncommon, Coastal, slope, pelagic.	Winter.
Striped dolphin (<i>S. coeruleoalba</i>)	MMPA-NC, ESA-NL	54,807	Rare, Pelagic	Winter.
Fraser's dolphin (<i>Lagenodelphis hosei</i>)	MMPA-NC, ESA-NL	¹⁶ 289,000	Uncommon, Pelagic	Winter.
Spinner dolphin (<i>Stenella longirostris</i>)	MMPA-NC, ESA-NL	¹⁶ 1,200,000	Rare, Pelagic	Winter.
Atlantic spotted dolphin (<i>S. frontalis</i>)	MMPA-NC, ESA-NL	44,715	Uncommon, Pelagic	Winter.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED SURVEY AREAS WITHIN THE SOUTH ATLANTIC OCEAN—Continued
[January through March 2016]

Species	Regulatory status ^{1 2}	Species abundance ³	Local occurrence and range ⁴	Season ⁵
Clymene dolphin (<i>S. clymene</i>)	MMPA-NC, ESA-NL	6,215	Rare, Pelagic	Winter.
Risso's dolphin (<i>Grampus griseus</i>)	MMPA-NC, ESA-NL	20,692	Uncommon, Pelagic	Winter.
Long-beaked common dolphin (<i>Delphinus capensis</i>)	MMPA-NC, ESA-NL	¹⁷ 20,000	Rare, Coastal	Winter.
Short-beaked common dolphin (<i>Delphinus delphis</i>) ...	MMPA-NC, ESA-NL	173,486	Uncommon, Coastal, shelf	Winter.
Southern right whale dolphin (<i>Lissodelphis peronii</i>) ...	MMPA-NC, ESA-NL	Unknown	Uncommon, Coastal, shelf	Winter.
Melon-headed whale (<i>Peponocephala electra</i>)	MMPA-NC, ESA-NL	¹⁸ 50,000	Uncommon, Coastal, shelf, pelagic.	Winter.
Pygmy killer whale (<i>Feresa attenuate</i>)	MMPA-NC, ESA-NL	3,585	Uncommon, Coastal, shelf, pelagic.	Winter.
False killer whale (<i>Pseudorca crassidens</i>)	MMPA-NC, ESA-NL	442	Rare, Pelagic	Winter.
Killer whale (<i>Orcinus orca</i>)	MMPA-NC, ESA-NL	¹⁹ 50,000	Uncommon, Coastal, pelagic.	Winter.
Long-finned pilot whale (<i>Globicephala melas</i>)	MMPA-NC, ESA-NL	¹⁴ 200,000	Uncommon, Pelagic	Winter.
Short-finned pilot whale (<i>Globicephala macrorhynchus</i>)	MMPA-NC, ESA-NL	¹⁴ 200,000	Uncommon, Pelagic	Winter.
Southern Elephant Seal (<i>Mirounga leonina</i>)	MMPA-NC, ESA-NL	²⁰ 650,000	Rare, Coastal	Winter.
Subantarctic fur seal (<i>Arctocephalus tropicalis</i>)	MMPA-NC, ESA-NL	²¹ 310,000	Uncommon, Pelagic	Winter.

² ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.

³ Except where noted abundance information obtained from NOAA Technical Memorandum NMFS-NE-231, U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments-2014 (Waring *et al.*, 2015) and the Draft 2015 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (*in review*, 2015). NA = Not available.

⁴ Occurrence and range information available from the International Union for the Conservation of Nature (IUCN).

⁵ NA = Not available due to limited information on that species' seasonal occurrence in the proposed area.

⁶ Best estimate from the International Whaling Commission's (IWC) estimate for the minke whale population (Southern Hemisphere, 2004).

⁷ Best estimate from the IWC's estimate for the blue whale population (Southern Hemisphere, 1998).

⁸ Estimate from IUCN Web page for Bryde's whales. Southern Hemisphere: Southern Indian Ocean (13,854); western South Pacific (16,585); and eastern South Pacific (13,194) (IWC, 1981).

⁹ Best estimate from the IWC's estimate for the fin whale population (East Greenland to Faroes, 2007).

¹⁰ Best estimate from the IWC's estimate for the humpback whale population (Southern Hemisphere, partial coverage of Antarctic feeding grounds, 2007).

¹¹ Estimate from the IUCN Web page for sei whales (IWC, 1996).

¹² Best estimate from the IWC's estimate for the southern right whale population (Southern Hemisphere, 2009).

¹³ Whitehead, (2002).

¹⁴ Abundance estimates for beaked, southern bottlenose, and pilot whales south of the Antarctic Convergence in January (Kasamatsu and Joyce, 1995).

¹⁵ Wells and Scott, (2009).

¹⁶ Jefferson *et al.*, (2008).

¹⁷ Cockcroft and Peddemors, (1990).

¹⁸ Estimate from the IUCN Web page for melon-headed whales (IUCN, 2015).

¹⁹ Estimate from the IUCN Web page for killer whales (IUCN, 2015).

²⁰ Estimate from the IUCN Web page for southern elephant seals (IUCN, 2015).

²¹ Arnoud, (2009).

NMFS refers the public to Lamont-Doherty's application, NSF's draft environmental analysis (see **ADDRESSES**), NOAA Technical Memorandum NMFS-NE-231, U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments-2014 (Waring *et al.*, 2015); and the Draft 2015 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (*in review*, 2015) available online at: <http://www.nmfs.noaa.gov/pr/sars/species.htm> for further information on the biology and local distribution of these species.

Potential Effects of the Specified Activities on Marine Mammals

This section includes a summary and discussion of the ways that components (e.g., seismic airgun operations, vessel movement) of the specified activity may impact marine mammals. The "Estimated Take by Incidental

Harassment" section later in this document will include a quantitative analysis of the number of individuals that NMFS expects to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific proposed activity would impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, the "Proposed Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

NMFS intends to provide a background of potential effects of Lamont-Doherty's activities in this section. This section does not consider

the specific manner in which Lamont-Doherty would carry out the proposed activity, what mitigation measures Lamont-Doherty would implement, and how either of those would shape the anticipated impacts from this specific activity. Operating active acoustic sources, such as airgun arrays, has the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of the airgun array.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.*, 1995; Southall *et al.*,

1997; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Southall *et al.* (2007) designated “functional hearing groups” for marine mammals based on available behavioral data; audiograms derived from auditory evoked potentials; anatomical modeling; and other data. Southall *et al.* (2007) also estimated the lower and upper frequencies of functional hearing for each group. However, animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range.

The functional groups applicable to this proposed survey and the associated frequencies are:

- Low frequency cetaceans (13 species of mysticetes): Functional

hearing estimates occur between approximately 7 Hertz (Hz) and 25 kHz (extended from 22 kHz based on data indicating that some mysticetes can hear above 22 kHz; Au *et al.*, 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.*, 2012);

- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing estimates occur between approximately 150 Hz and 160 kHz;

- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia*, the franciscana, and four species of *cephalorhynchids*): Functional hearing estimates occur between approximately 200 Hz and 180 kHz; and

- Pinnipeds in water: Phocid (true seals) functional hearing estimates occur between approximately 75 Hz and 100 kHz (Hemila *et al.*, 2006; Mulsow *et al.*, 2011; Reichmuth *et al.*, 2013) and otariid (seals and sea lions) functional hearing estimates occur between approximately 100 Hz to 40 kHz.

Approximately 42 marine mammal species (8 mysticetes, 32 odontocetes, and two pinnipeds) would likely occur in the proposed action area. Table 2 presents the classification of these species into their respective functional hearing group. NMFS consider a species' functional hearing group when analyzing the effects of exposure to sound on marine mammals.

TABLE 2—CLASSIFICATION OF MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED SURVEY AREAS WITHIN THE SOUTH ATLANTIC OCEAN (JANUARY THROUGH MARCH 2016) BY FUNCTIONAL HEARING GROUP

[Southall *et al.*, 2007]

Low Frequency Hearing Range	Antarctic minke, blue, Bryde's, common (dwarf) minke, fin, humpback, Sei, and Southern right whale
Mid-Frequency Hearing Range	Sperm whale; Cuvier's, Andrew's, Arnoux's, Blainville's, Gervais', Gray's, Hector's, Shepherd's, strap-toothed, and True's beaked whale; Southern bottlenose whale; bottlenose, rough-toothed, pantropical spotted, striped, Fraser's dolphin spinner, Atlantic spotted, Clymene, Risso's, long-beaked common, short-beaked common, and Southern right whale dolphin; melon-headed whale; pygmy killer whale; false killer whale; killer whale, long-finned pilot whale; and short-finned pilot whale
High Frequency Hearing Range	Dwarf sperm whale and pygmy sperm whale
Pinnipeds in Water Hearing Range	Southern elephant seal and Subantarctic fur seal

1. Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.*, 1995).

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defined tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or manmade noise. In many cases, tolerance develops by the animal habituating to the stimulus (*i.e.*, the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.*, 1995), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they

are exposed to chronic stimuli (Richardson, *et al.*, 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have also shown that marine mammals at distances of more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions (Stone, 2003; Stone and Tasker, 2006; Moulton *et al.* 2005, 2006) and (MacLean and Koski, 2005; Bain and Williams, 2006).

Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in³ or 3,147 in³ in Angolan waters between August 2004 and May 2005. Weir (2008) recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and

Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings per hour) for humpback and sperm whales according to the airgun array's operational status (*i.e.*, active versus silent).

Bain and Williams (2006) examined the effects of a large airgun array (maximum total discharge volume of 1,100 in³) on six species in shallow waters off British Columbia and Washington: Harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), gray whale (*Eschrichtius robustus*), Dall's porpoise (*Phocoenoides dalli*), and harbor porpoise (*Phocoena phocoena*). Harbor porpoises showed reactions at received levels less than 155 dB re: 1 μ Pa at a distance of greater than 70 km (43 mi) from the seismic source (Bain and Williams, 2006). However, the tendency for greater responsiveness by harbor porpoise is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson, *et al.*, 1995; Southall, *et al.*, 2007). In contrast, the authors reported that gray whales seemed to tolerate exposures to sound up to approximately 170 dB re: 1 μ Pa (Bain and Williams, 2006) and

Dall's porpoises occupied and tolerated areas receiving exposures of 170–180 dB re: 1 μ Pa (Bain and Williams, 2006; Parsons, *et al.*, 2009). The authors observed several gray whales that moved away from the airguns toward deeper water where sound levels were higher due to propagation effects resulting in higher noise exposures (Bain and Williams, 2006). However, it is unclear whether their movements reflected a response to the sounds (Bain and Williams, 2006). Thus, the authors surmised that the lack of gray whale responses to higher received sound levels were ambiguous at best because one expects the species to be the most sensitive to the low-frequency sound emanating from the airguns (Bain and Williams, 2006).

Pirotta *et al.* (2014) observed short-term responses of harbor porpoises to a two-dimensional (2-D) seismic survey in an enclosed bay in northeast Scotland which did not result in broad-scale displacement. The harbor porpoises that remained in the enclosed bay area reduced their buzzing activity by 15 percent during the seismic survey (Pirotta, *et al.*, 2014). Thus, the authors suggest that animals exposed to anthropogenic disturbance may make trade-offs between perceived risks and the cost of leaving disturbed areas (Pirotta, *et al.*, 2014).

Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000).

The term masking refers to the inability of an animal to recognize the occurrence of an acoustic stimulus because of interference of another acoustic stimulus (Clark *et al.*, 2009). Thus, masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. It is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

Introduced underwater sound may, through masking, may more specifically reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine

mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.*, 1995).

Marine mammals are thought to be able to compensate for communication masking by adjusting their acoustic behavior through shifting call frequencies, increasing call volume, and increasing vocalization rates. For example in one study, blue whales increased call rates when exposed to noise from seismic surveys in the St. Lawrence Estuary (Di Iorio and Clark, 2010). Other studies reported that some North Atlantic right whales exposed to high shipping noise increased call frequency (Parks *et al.*, 2007) and some humpback whales responded to low-frequency active sonar playbacks by increasing song length (Miller *et al.*, 2000). Additionally, beluga whales change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.*, 1985; Lesage *et al.*, 1999; Scheifele *et al.*, 2005).

Studies have shown that some baleen and toothed whales continue calling in the presence of seismic pulses, and some researchers have heard these calls between the seismic pulses (*e.g.*, Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, 2005b, 2006; and Dunn and Hernandez, 2009).

In contrast, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, NMFS is aware of one report that observed sperm whales ceasing calls when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994). However, more recent studies have found that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002; Tyack *et al.*, 2003; Smultea *et al.*, 2004; Holst *et al.*, 2006; and Jochens *et al.*, 2008).

Risch *et al.* (2012) documented reductions in humpback whale vocalizations in the Stellwagen Bank National Marine Sanctuary concurrent with transmissions of the Ocean Acoustic Waveguide Remote Sensing (OAWRS) low-frequency fish sensor system at distances of 200 km (124 mi) from the source. The recorded OAWRS produced series of frequency modulated pulses and the signal received levels ranged from 88 to 110 dB re: 1 μ Pa (Risch, *et al.*, 2012). The authors hypothesized that individuals did not leave the area but instead ceased singing and noted that the duration and

frequency range of the OAWRS signals (a novel sound to the whales) were similar to those of natural humpback whale song components used during mating (Risch *et al.*, 2012). Thus, the novelty of the sound to humpback whales in the study area provided a compelling contextual probability for the observed effects (Risch *et al.*, 2012). However, the authors did not state or imply that these changes had long-term effects on individual animals or populations (Risch *et al.*, 2012).

Several studies have also reported hearing dolphins and porpoises calling while airguns were operating (*e.g.*, Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, b; and Potter *et al.*, 2007). The sounds important to small odontocete communication are predominantly at much higher frequencies than the dominant components of airgun sounds, thus limiting the potential for masking in those species.

Although some degree of masking is inevitable when high levels of manmade broadband sounds are present in the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Odontocete conspecifics may readily detect structured signals, such as the echolocation click sequences of small toothed whales even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.*, 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence

confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.*, 1986; Dubrovskiy, 1990; Bain *et al.*, 1993; Bain and Dahlheim, 1994).

Toothed whales and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.*, 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.*, 1999). A few marine mammal species increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1993, 1999; Terhune, 1999; Foote *et al.*, 2004; Parks *et al.*, 2007, 2009; Di Iorio and Clark, 2010; Holt *et al.*, 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Studies have noted directional hearing at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.*, 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and

many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007).

Types of behavioral reactions can include the following: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, one could expect the consequences of behavioral modification to be biologically significant if the change affects growth, survival, and/or reproduction (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007). Examples of behavioral modifications that could impact growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those associated with beaked whale stranding related to exposure to military mid-frequency tactical sonar);
- Permanent habitat abandonment due to loss of desirable acoustic environment; and
- Disruption of feeding or social interaction resulting in significant energetic costs, inhibited breeding, or cow-calf separation.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.*, 1995; Southall *et al.*, 2007).

Baleen Whales

Studies have shown that underwater sounds from seismic activities are often readily detectable by baleen whales in the water at distances of many kilometers (Castellote *et al.*, 2012 for fin whales). Many studies have also shown that marine mammals at distances more than a few kilometers away often show no apparent response when exposed to seismic activities (*e.g.*, Madsen & Mohl, 2000 for sperm whales; Malme *et al.*, 1983, 1984 for gray whales; and Richardson *et al.*, 1986 for bowhead whales). Other studies have shown that marine mammals continue important behaviors in the presence of seismic

pulses (*e.g.*, Dunn & Hernandez, 2009 for blue whales; Greene Jr. *et al.*, 1999 for bowhead whales; Holst and Beland, 2010; Holst and Smultea, 2008; Holst *et al.*, 2005; Nieuw Kirk *et al.*, 2004; Richardson, *et al.*, 1986; Smultea *et al.*, 2004).

Observers have seen various species of *Balaenoptera* (blue, sei, fin, and minke whales) in areas ensounded by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and have localized calls from blue and fin whales in areas with airgun operations (*e.g.*, McDonald *et al.*, 1995; Dunn and Hernandez, 2009; Castellote *et al.*, 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good visibility, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting versus silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006).

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and whales) in the northwest Atlantic found that overall, this group had lower sighting rates during seismic versus non-seismic periods (Moulton and Holst, 2010). The authors observed that baleen whales as a group were significantly farther from the vessel during seismic compared with non-seismic periods. Moreover, the authors observed that the whales swam away more often from the operating seismic vessel (Moulton and Holst, 2010). Initial sightings of blue and minke whales were significantly farther from the vessel during seismic operations compared to non-seismic periods and the authors observed the same trend for fin whales (Moulton and Holst, 2010). Also, the authors observed that minke whales most often swam away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Blue Whales

McDonald *et al.* (1995) tracked blue whales relative to a seismic survey with a 1,600 in³ airgun array. One whale started its call sequence within 15 km (9.3 mi) from the source, then followed a pursuit track that decreased its distance to the vessel where it stopped calling at a range of 10 km (6.2 mi) (estimated received level at 143 dB re: 1 μ Pa (peak-to-peak)). After that point, the ship increased its distance from the whale which continued a new call sequence after approximately one hour

and 10 km (6.2 mi) from the ship. The authors reported that the whale had taken a track paralleling the ship during the cessation phase but observed the whale moving diagonally away from the ship after approximately 30 minutes continuing to vocalize. Because the whale may have approached the ship intentionally or perhaps was unaffected by the airguns, the authors concluded that there was insufficient data to infer conclusions from their study related to blue whale responses (McDonald, *et al.*, 1995).

Dunn and Hernandez (2009) tracked blue whales in the eastern tropical Pacific Ocean near the northern East Pacific Rise using 25 ocean-bottom-mounted hydrophones and ocean bottom seismometers during the conduct of an academic seismic survey by the R/V *Maurice Ewing* in 1997. During the airgun operations, the authors recorded the airgun pulses across the entire seismic array which they determined were detectable by eight whales that had entered into the area during a period of airgun activity (Dunn and Hernandez, 2009). The authors were able to track each whale call-by-call using the B components of the calls and examine the whales' locations and call characteristics with respect to the periods of airgun activity. The authors tracked the blue whales from 28 to 100 km (17 to 62 mi) away from active air-gun operations, but did not observe changes in call rates and found no evidence of anomalous behavior that they could directly ascribed to the use of the airguns (Dunn and Hernandez, 2009; Wilcock *et al.*, 2014). Further, the authors state that while the data do not permit a thorough investigation of behavioral responses, they observed no correlation in vocalization or movement with the concurrent airgun activity and estimated that the sound levels produced by the *Ewing's* airguns were approximately less than 145 dB re: 1 μ Pa (Dunn and Hernandez, 2009).

Fin Whales

Castellote *et al.* (2010) observed localized avoidance by fin whales during seismic airgun events in the western Mediterranean Sea and adjacent Atlantic waters from 2006–2009 and reported that singing fin whales moved away from an operating airgun array for a time period that extended beyond the duration of the airgun activity.

Gray Whales

A few studies have documented reactions of migrating and feeding (but not wintering) gray whales (*Eschrichtius robustus*) to seismic surveys. Malme *et*

al. (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in³ airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μ Pa on an (approximate) root mean square basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μ Pa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.*, 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.*, 1999; Gailey *et al.*, 2007; Johnson *et al.*, 2007; Yazvenko *et al.*, 2007a, 2007b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.*, 1984; Richardson *et al.*, 1995; Allen and Angliss, 2014). The western Pacific gray whale population did not appear affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.*, 2007). Similarly, bowhead whales (*Balaena mysticetus*) have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987; Allen and Angliss, 2014). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Humpback Whales

McCauley *et al.* (1998, 2000) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678-in³) and to a single, 20-in³ airgun with source level of 227 dB re: 1 μ Pa (peak-to-peak). In the 1998 study, the researchers documented that avoidance reactions began at five to eight km (3.1

to 4.9 mi) from the array, and that those reactions kept most pods approximately three to four km (1.9 to 2.5 mi) from the operating seismic boat. In the 2000 study, McCauley *et al.* noted localized displacement during migration of four to five km (2.5 to 3.1 mi) by traveling pods and seven to 12 km (4.3 to 7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μ Pa for humpback pods containing females, and at the mean closest point of approach distance, the received level was 143 dB re: 1 μ Pa. The initial avoidance response generally occurred at distances of five to eight km (3.1 to 4.9 mi) from the airgun array and 2 km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re: 1 μ Pa.

Data collected by observers during several of Lamont-Doherty's seismic surveys in the northwest Atlantic Ocean showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic versus non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100-in³) airgun (Malme *et al.*, 1985). Some humpbacks seemed "startled" at received levels of 150 to 169 dB re: 1 μ Pa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re: 1 μ Pa. However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Other studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.*, 2004). However, the evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was

not consistent with subsequent results from the same area of Brazil (Parente *et al.*, 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was “no observable direct correlation” between strandings and seismic surveys (IWC, 2007: 236).

Toothed Whales

Few systematic data are available describing reactions of toothed whales to noise pulses. However, systematic work on sperm whales is underway (e.g., Gordon *et al.*, 2006; Madsen *et al.*, 2006; Winsor and Mate, 2006; Jochens *et al.*, 2008; Miller *et al.*, 2009) and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.*, 2006; Stone and Tasker, 2006; Potter *et al.*, 2007; Hauser *et al.*, 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.*, 2009; Richardson *et al.*, 2009; Moulton and Holst, 2010). Reactions of toothed whales to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for mysticetes.

Delphinids

Seismic operators and protected species observers (observers) on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.*, 2009; Barkaszi *et al.*, 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of airguns is operating than when it is silent (e.g., Goold, 1996a,b,c; Stone and Tasker, 2006; Weir, 2008; Barry *et al.*, 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins exhibited changes in behavior when exposed to strong pulsed sounds similar in

duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002, 2005). However, the animals tolerated high received levels of sound (pk–pk level > 200 dB re 1 μ Pa) before exhibiting aversive behaviors.

Killer Whales

Observers stationed on seismic vessels operating off the United Kingdom from 1997–2000 have provided data on the occurrence and behavior of various toothed whales exposed to seismic pulses (Stone, 2003; Gordon *et al.*, 2004). The studies note that killer whales were significantly farther from large airgun arrays during periods of active airgun operations compared with periods of silence. The displacement of the median distance from the array was approximately 0.5 km (0.3 mi) or more. Killer whales also appear to be more tolerant of seismic shooting in deeper water (Stone, 2003; Gordon *et al.*, 2004).

Sperm Whales

Most studies of sperm whales exposed to airgun sounds indicate that the whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.*, 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate alteration of foraging behavior upon exposure to airgun sounds (Jochens *et al.*, 2008; Miller *et al.*, 2009; Tyack, 2009).

Beaked Whales

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.*, 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.*, 2006; Tyack *et al.*, 2006).

Based on a single observation, Aguilar-Soto *et al.* (2006) suggested a reduction in foraging efficiency of Cuvier's beaked whales during a close approach by a vessel. In contrast, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the northwest Atlantic and the authors observed seven of those sightings during times when at least one airgun was operating. Because sighting rates and distances were similar during seismic and non-seismic periods, the authors could not correlate changes

to beaked whale behavior to the effects of airgun operations (Moulton and Holst, 2010).

Similarly, other studies have observed northern bottlenose whales remain in the general area of active seismic operations while continuing to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.*, 2005).

Pinnipeds

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.*, 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in³. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal (*Phoca hispida*) sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundred meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by the animals. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.*, 1995). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998).

Hearing Impairment

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.*, 2005). Factors that influence the amount of threshold shift include the amplitude, duration,

frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.*, the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.*, 2007).

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (*i.e.*, sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.*, there is complete recovery), can occur in specific frequency ranges (*i.e.*, an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn

may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985).

PTS is considered an auditory injury (Southall *et al.*, 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in non-human animals.

Recent studies by Kujawa and Liberman (2009) and Lin *et al.* (2011) found that despite completely reversible threshold shifts that leave cochlear sensory cells intact, large threshold shifts could cause synaptic level changes and delayed cochlear nerve degeneration in mice and guinea pigs, respectively. NMFS notes that the high level of TTS that led to the synaptic changes shown in these studies is in the range of the high degree of TTS that Southall *et al.* (2007) used to calculate PTS levels. It is unknown whether smaller levels of TTS would lead to similar changes. NMFS, however, acknowledges the complexity of noise exposure on the nervous system, and will re-examine this issue as more data become available.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.*, 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.*, 2009; Mooney *et al.*, 2009a, 2009b; Popov *et al.*, 2011a, 2011b; Kastelein *et al.*, 2012a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.*, 1999, 2005; Kastelein *et al.*, 2012b).

Lucke *et al.* (2009) found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at

200.2 dB (peak-to-peak) re: 1 μ Pa, which corresponds to a sound exposure level of 164.5 dB re: 1 μ Pa² s after integrating exposure. NMFS currently uses the root-mean-square (rms) of received SPL at 180 dB and 190 dB re: 1 μ Pa as the threshold above which permanent threshold shift (PTS) could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.*, 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μ Pa, and the received levels associated with PTS (Level A harassment) would be higher. This is still above NMFS' current 180 dB rms re: 1 μ Pa threshold for injury. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.*, 2002; Kastelein and Jennings, 2012).

A recent study on bottlenose dolphins (Schlundt, *et al.*, 2013) measured hearing thresholds at multiple frequencies to determine the amount of TTS induced before and after exposure to a sequence of impulses produced by a seismic airgun. The airgun volume and operating pressure varied from 40–150 in³ and 1000–2000 psi, respectively. After three years and 180 sessions, the authors observed no significant TTS at any test frequency, for any combinations of airgun volume, pressure, or proximity to the dolphin during behavioral tests (Schlundt, *et al.*, 2013). Schlundt *et al.* (2013) suggest that the potential for airguns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of airgun impulses compared to the high-frequency hearing ability of dolphins.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a

time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed seismic survey. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent compared to cetacean reactions.

Non-Auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.*, beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is

behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classic "fight or flight" response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with stress. These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, the pituitary hormones regulate virtually all neuroendocrine functions affected by stress—including immune competence, reproduction, metabolism, and behavior. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that the body quickly replenishes after alleviation of the stressor. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, it diverts energy resources from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-

pathological or pathological state called "distress" (*sensu* Seyle, 1950) or "allostatic loading" (*sensu* McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as "distress" upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (*e.g.*, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.*, goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains

limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, NMFS assumes that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.*, 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, there are few data about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. In addition, marine mammals that show behavioral avoidance of seismic vessels, including some pinnipeds, are unlikely to incur non-auditory impairment or other physical effects.

Stranding and Mortality

When a living or dead marine mammal swims or floats onto shore and becomes "beached" or incapable of

returning to sea, the event is a "stranding" (Geraci *et al.*, 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that "(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance."

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxins, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.*, 1976; Eaton, 1979; Odell *et al.*, 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chrousos, 2000; Creel, 2005; DeVries *et al.*, 2003; Fair and Becker, 2000; Foley *et al.*, 2001; Moberg, 2000; Relyea, 2005a; 2005b; Romero, 2004; Sih *et al.*, 2004).

2. Potential Effects of Other Acoustic Devices

Multibeam Echosounder: Lamont-Doherty would operate the Kongsberg EM 122 multibeam echosounder from the source vessel during the planned survey. Sounds from the multibeam echosounder are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μ Pa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of

eight (in water greater than 1,000 m deep) or four (less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the vessel (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2- to 15-ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause temporary threshold shift.

NMFS has considered the potential for behavioral responses such as stranding and indirect injury or mortality from Lamont-Doherty's use of the multibeam echosounder. In 2013, an International Scientific Review Panel (ISRP) investigated a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system (Southall *et al.*, 2013) associated with the use of a high-frequency mapping system. The report indicated that the use of a 12-kHz multibeam echosounder was the most plausible and likely initial behavioral trigger of the mass stranding event. This was the first time that a relatively high-frequency mapping sonar system had been associated with a stranding event. However, the report also notes that there were several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales within the Loza Lagoon system (e.g., the survey vessel transiting in a north-south direction on the shelf break parallel to the shore may have trapped the animals between the sound source and the shore driving them towards the Loza Lagoon). They concluded that for odontocete cetaceans that hear well in the 10–50 kHz range, where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in

terms of anthropogenic noise impacts (Southall, *et al.*, 2013). However, the risk may be very low given the extensive use of these systems worldwide on a daily basis and the lack of direct evidence of such responses previously reported (Southall, *et al.*, 2013).

Navy sonars linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the echosounder. The area of possible influence of the echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During Lamont-Doherty's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by the animal. The following section outlines possible effects of an echosounder on marine mammals.

Masking: Marine mammal communications would not be masked appreciably by the echosounder's signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the echosounder's signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses: Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and strandings by beaked whales. During exposure to a 21 to 25 kHz "whale-finding" sonar with a source level of 215 dB re: 1 μ Pa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38-kHz echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the eastern tropical Pacific Ocean, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those emitted by Lamont-Doherty's echosounder and to shorter broadband

pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an echosounder.

Hearing Impairment and Other Physical Effects: Given recent stranding events associated with the operation of mid-frequency tactical sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see earlier discussion). However, the echosounder proposed for use by the *Langseth* is quite different from sonar used for naval operations. The echosounder's pulse duration is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the echosounder's beam for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the echosounder relative to that from naval sonar.

Lamont-Doherty would also operate a sub-bottom profiler from the source vessel during the proposed survey. The profiler's sounds are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the *Langseth* has a maximum source level of 222 dB re: 1 μ Pa. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a profiler more powerful than that on the *Langseth*. If the animal was in the area, it would have to pass the transducer at close range and be subjected to sound levels that could cause temporary threshold shift.

Masking: Marine mammal communications would not be masked appreciably by the profiler's signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the profiler's signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses: Responses to the profiler are likely to be similar to the other pulsed sources discussed earlier if

received at the same levels. However, the pulsed signals from the profiler are considerably weaker than those from the echosounder.

Hearing Impairment and Other Physical Effects: It is unlikely that the profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The profiler operates simultaneously with other higher-power acoustic sources. Many marine mammals would move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the profiler.

3. Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. We discuss both scenarios here.

Behavioral Responses to Vessel Movement: There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.*, killer whales in Puget Sound; Foote *et al.*, 2004; Holt *et al.*, 2008). In cases where vessels actively approach marine mammals (*e.g.*, whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.*, 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales: In summary, toothed whales sometimes show no avoidance

reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.

Baleen whales: When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.*, 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jackson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were "modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli." Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally

uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that "whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways."

Vessel Strike

Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that

most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kts).

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed seismic survey would require towing approximately 8.0 km (4.9 mi) of equipment and cables. This size of the array generally carries a lower risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of entanglement due to the low amount of slack in the lines, slow speed of the survey vessel, and onboard monitoring. Lamont-Doherty has no recorded cases of entanglement of marine mammals during their conduct of over 11 years of seismic surveys (NSF, 2015).

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat and other marine species are associated with elevated sound levels produced by airguns. This section describes the potential impacts to marine mammal habitat from the specified activity.

Anticipated Effects on Fish as Prey Species

NMFS considered the effects of the survey on marine mammal prey (*i.e.*, fish and invertebrates), as a component of marine mammal habitat in the following subsections.

There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (*i.e.*, mortality).

The available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population. There have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to

airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects: The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

There are few data about the mechanisms and characteristics of damage impacting fish by exposure to seismic survey sounds. Peer-reviewed scientific literature has presented few data on this subject. NMFS is aware of only two papers with proper experimental methods, controls, and careful pathological investigation that implicate sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated temporary threshold shift in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et*

al. (2005) documented only temporary threshold shift (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than what would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)) likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than 2 m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (i.e., the cutoff frequency) at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.*, 1987; La Bella *et al.*, 1996; Santulli *et al.*, 1999; McCauley *et al.*, 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.*, 2003; Popper *et al.*, 2005; Boeger *et al.*, 2006).

The National Park Service conducted an experiment of the effects of a single 700 in³ airgun in Lake Meade, Nevada (USGS, 1999) to understand the effects of a marine reflection survey of the Lake Meade fault system (Paulson *et al.*, 1993, in USGS, 1999). The researchers suspended the airgun 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and fired three successive times at a 30 s interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and

fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in³) array. Brezzina and Associates, hired by USGS to monitor the effects of the surveys, concluded that airgun operations were not responsible for the death of any of the fish carcasses observed, and the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.*, 1996; Dalen *et al.*, 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a worst-case scenario, mathematical model to investigate the effects of seismic energy on fish eggs and larvae. The authors concluded that mortality rates caused by exposure to seismic surveys were low, as compared to natural mortality rates, and suggested that the impact of seismic surveying on recruitment to a fish stock was not significant.

Physiological Effects: Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.*, 1994; Santulli *et al.*, 1999; McCauley *et al.*, 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects: Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Santulli *et al.*, 1999; Wardle *et al.*, 2001; Hassel *et al.*, 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The former Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet, Alaska. The seismic survey proposed using three vessels, each towing two, four-airgun arrays ranging from 1,500 to 2,500 in³. The Minerals Management Service noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary and also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (*e.g.*, demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions (Lokkeborg *et al.*, 2012; Fewtrell and McCauley, 2012). NMFS would expect prey species to return to their pre-exposure behavior once seismic firing ceased (Lokkeborg *et al.*, 2012; Fewtrell and McCauley, 2012).

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.*, 2001). The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale.

Moriyasu *et al.* (2004) and Payne *et al.* (2008) provide literature reviews of the effects of seismic and other underwater sound on invertebrates. The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is in Appendix E of NSF's 2011 Programmatic Environmental Impact Statement (NSF/USGS, 2011).

Pathological Effects: In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.*, 1994; Christian *et al.*, 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.*, 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.*, 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.*, 2004), but the article provides little evidence to support this claim.

Tenera Environmental (2011) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.*, 2004) observed lethal effects in squid (*Loligo*

vulgaris) at levels of 246 to 252 dB after 3 to 11 minutes. Another laboratory study observed abnormalities in larval scallops after exposure to low frequency noise in tanks (de Soto *et al.*, 2013).

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris*, *Sepia officinalis*, *Octopus vulgaris*, and *Ilex coindetii*) to two hours of continuous sound from 50 to 400 Hz at 157 ± 5 dB re: 1 µPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low-frequency sound. The received sound pressure level was 157 ± 5 dB re: 1 µPa, with peak levels at 175 dB re: 1 µPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects: Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Studies have noted primary and secondary stress responses (*i.e.*, changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans occurring several days or months after exposure to seismic survey sounds (Payne *et al.*, 2007). The authors noted that crustaceans exhibited no behavioral impacts (Christian *et al.*, 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects: There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (*e.g.*, squid in McCauley *et al.*, 2000). In other cases, the authors observed no behavioral impacts (*e.g.*, crustaceans in Christian *et al.*, 2003, 2004; DFO, 2004). There have been anecdotal reports of

reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.*, 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

In examining impacts to fish and invertebrates as prey species for marine mammals, we expect fish to exhibit a range of behaviors including no reaction or habituation (Peña *et al.*, 2013) to startle responses and/or avoidance (Fewtrell and McCauley, 2012). We expect that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species. Although there is a potential for injury to fish or marine life in close proximity to the vessel, we expect that the impacts of the seismic survey on fish and other marine life specifically related to acoustic activities would be temporary in nature, negligible, and would not result in substantial impact to these species or to their role in the ecosystem. Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an Incidental Harassment Authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Lamont-Doherty has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description.

(1) Protocols used during previous Lamont-Doherty and NSF-funded seismic research cruises as approved by us and detailed in the NSF's 2011 PEIS and 2015 draft environmental analysis;

(2) Previous incidental harassment authorizations applications and

authorizations that NMFS has approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, Lamont-Doherty, and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;

(2) Proposed exclusion zones;

(3) Power down procedures;

(4) Shutdown procedures;

(5) Ramp-up procedures; and

(6) Speed and course alterations.

NMFS reviewed Lamont-Doherty's proposed mitigation measures and has proposed an additional measure to effect the least practicable adverse impact on marine mammals. They are:

(1) Expanded power down procedures for concentrations of six or more whales that do not appear to be traveling (*e.g.*, feeding, socializing, etc.).

Vessel-Based Visual Mitigation Monitoring

Lamont-Doherty would position observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Observers would also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown (*i.e.*, greater than approximately eight minutes for this proposed cruise). When feasible, the observers would conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the *Langseth* would power down or shutdown the airguns when marine mammals are observed within or about to enter a designated exclusion zone for cetaceans or pinnipeds.

During seismic operations, at least four protected species observers would be aboard the *Langseth*. Lamont-Doherty would appoint the observers with NMFS concurrence, and they would conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two observers would be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two observers would increase the effectiveness of detecting animals near

the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer would be on watch during bathroom breaks and mealtimes. Observers would be on duty in shifts of no longer than four hours in duration.

Two observers on the *Langseth* would also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third observer would monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two observers (visual) on duty from the observation tower, and an observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, Lamont-Doherty would instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level would be approximately 21.5 m (70.5 ft) above sea level, and the observer would have a good view around the entire vessel. During daytime, the observers would scan the area around the vessel systematically with reticle binoculars (*e.g.*, 7 × 50 Fujinon), Big-eye binoculars (25 × 150), and with the naked eye. During darkness, night vision devices would be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) would be available to assist with distance estimation. They are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. The user measures distances to animals with the reticles in the binoculars.

Lamont-Doherty would immediately power down or shutdown the airguns when observers see marine mammals within or about to enter the designated exclusion zone. The observer(s) would continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations would not resume until the observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Proposed Mitigation Exclusion Zones

Lamont-Doherty would use safety radii to designate exclusion zones and to estimate take for marine mammals. Table 3 shows the distances at which

one would expect to receive sound levels (160-, 180-, and 190-dB,) from the airgun array and a single airgun. If the protected species visual observer detects marine mammal(s) within or about to

enter the appropriate exclusion zone, the *Langseth* crew would immediately power down the airgun array, or perform a shutdown if necessary (see Shut-down Procedures).

TABLE 3—PREDICTED DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 re: 1 μ Pa COULD BE RECEIVED DURING THE PROPOSED SURVEY AREAS WITHIN THE SOUTH ATLANTIC OCEAN
[January through March, 2016]

Source and volume (in ³)	Tow depth (m)	Water depth (m)	Predicted RMS distances ¹ (m)		
			190 dB	180 dB	160 dB
Single Bolt airgun (40 in ³)	9	> 1,000	100	100	388
36-Airgun Array (6,600 in ³)					
	9	> 1,000	286	927	5,780

¹ Predicted distances based on information presented in Lamont-Doherty's application.

The 180- or 190-dB level shutdown criteria are applicable to cetaceans and pinnipeds respectively as specified by NMFS (2000). Lamont-Doherty used these levels to establish the exclusion zones as presented in their application.

Lamont-Doherty used a process to develop and confirm the conservativeness of the mitigation radii for a shallow-water seismic survey in the northeast Pacific Ocean offshore Washington in 2012. Crone *et al.* (2014) analyzed the received sound levels from the 2012 survey and reported that the actual distances for the exclusion and buffer zones were two to three times smaller than what Lamont-Doherty's modeling approach predicted. While these results confirm the role that bathymetry plays in propagation, they also confirm that empirical measurements from the Gulf of Mexico survey likely over-estimated the size of the exclusion zones for the 2012 Washington shallow-water seismic surveys. NMFS reviewed this preliminary information in consideration of how these data reflect on the accuracy of Lamont-Doherty's current modeling approach.

Power Down Procedures

A power down involves decreasing the number of airguns in use such that the radius of the 180-dB or 190-dB exclusion zone is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, the *Langseth* would operate one airgun (40 in³). The continued operation of one airgun would alert marine mammals to the presence of the seismic vessel in the area. A shutdown

occurs when the *Langseth* suspends all airgun activity.

If the observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew would power down the airguns to reduce the size of the 180-dB or 190-dB exclusion zone before the animal enters that zone. Likewise, if a mammal is already within the zone after detection, the crew would power-down the airguns immediately. During a power down of the airgun array, the crew would operate a single 40-in³ airgun which has a smaller exclusion zone. If the observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 3), the crew would shut down the single airgun (see next section).

Resuming Airgun Operations After a Power Down

Following a power-down, the *Langseth* crew would not resume full airgun activity until the marine mammal has cleared the 180-dB or 190-dB exclusion zone. The observers would consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone; or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (*i.e.*, small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (*i.e.*, mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or

The *Langseth* crew would resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (*i.e.*, small odontocetes or pinnipeds). Likewise, the crew would resume airgun operations at full power after 30 minutes of sighting

any species with longer dive durations (*i.e.*, mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

NMFS estimates that the *Langseth* would transit outside the original 180-dB or 190-dB exclusion zone after an 8-minute wait period. This period is based on the average speed of the *Langseth* while operating the airguns (8.5 km/h; 5.3 mph). Because the vessel has transited away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power down (*i.e.*, transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, observers can observe to the horizon (10 km; 6.2 mi) from the height of the *Langseth's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

Shutdown Procedures

The *Langseth* crew would shut down the operating airgun(s) if they see a marine mammal within or approaching the exclusion zone for the single airgun. The crew would implement a shutdown:

- (1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power down; or
- (2) If an observer sees the animal is initially within the exclusion zone of

the single airgun when more than one airgun (typically the full airgun array) is operating.

Resuming Airgun Operations after a Shutdown: Following a shutdown in excess of eight minutes, the *Langseth* crew would initiate a ramp-up with the smallest airgun in the array (40-in³). The crew would turn on additional airguns in a sequence such that the source level of the array would increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the observers would monitor the exclusion zone, and if he/she sees a marine mammal, the *Langseth* crew would implement a power down or shutdown as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew would need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew would follow ramp-up procedures for a shutdown described earlier and the observers would monitor the full exclusion zone and would implement a power down or shutdown if necessary.

If the full exclusion zone is not visible to the observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew would not commence ramp-up unless at least one airgun (40-in³ or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew would not ramp up the

airgun array from a complete shutdown at night or in thick fog, because the outer part of the zone for that array would not be visible during those conditions.

If one airgun has operated during a power down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew would not initiate a ramp-up of the airguns if an observer sees the marine mammal within or near the applicable exclusion zones during the day or close to the vessel at night.

Ramp-Up Procedures

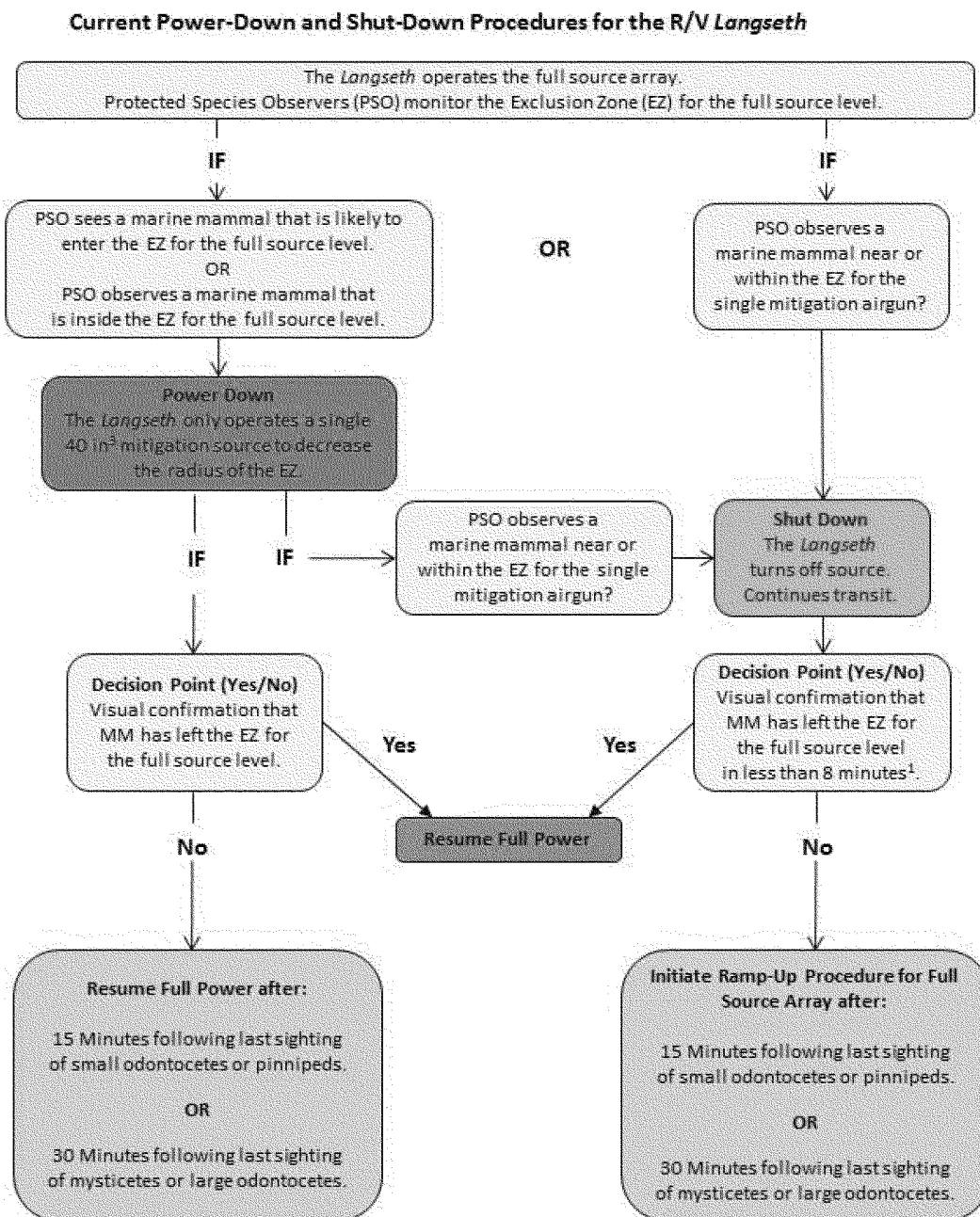
Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to "warn" marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. Lamont-Doherty would follow a ramp-up procedure when the airgun array begins operating after an 8 minute period without airgun operations or when shut down has exceeded that period. Lamont-Doherty has used similar waiting periods (approximately eight to 10 minutes) during previous seismic surveys.

Ramp-up would begin with the smallest airgun in the array (40-in³). The crew would add airguns in a sequence

such that the source level of the array would increase in steps not exceeding six dB per five minute period over a total duration of approximately 30 to 35 minutes. During ramp-up, the observers would monitor the exclusion zone, and if marine mammals are sighted, Lamont-Doherty would implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, Lamont-Doherty would not commence the ramp-up unless at least one airgun (40-in³ or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the crew would not ramp up the airgun array from a complete shutdown at night or in thick fog, because the outer part of the exclusion zone for that array would not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. Lamont-Doherty would not initiate a ramp-up of the airguns if an observer sights a marine mammal within or near the applicable exclusion zones. NMFS refers the reader to Figure 2, which presents a flowchart representing the ramp-up, power down, and shut down protocols described in this notice.

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Figure 2. Ramp-up, power down and shut-down procedures for the *Langseth*.**¹ Ramp-Up Procedures**

For a given survey, Lamont-Doherty would calculate a specified period based on the 180-dB exclusion zone radius in relation to the average planned speed of the *Langseth* while surveying. Lamont-Doherty has used similar periods (8-10 minutes) for previous surveys. Ramp up will not occur if a marine mammal or sea turtle has not cleared the exclusion zone for the full array.

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group of whales would consist of six or more individuals visually sighted that do not appear to be traveling (e.g., feeding, socializing, etc.).

Speed and Course Alterations

If during seismic data collection, Lamont-Doherty detects marine mammals outside the exclusion zone and, based on the animal's position and direction of travel, is likely to enter the exclusion zone, the *Langseth* would change speed and/or direction if this does not compromise operational safety. Due to the limited maneuverability of the primary survey vessel, altering speed, and/or course can result in an extended period of time to realign the *Langseth* to the transect line. However, if the animal(s) appear likely to enter the exclusion zone, the *Langseth* would undertake further mitigation actions, including a power down or shut down of the airguns.

Mitigation Conclusions

NMFS has carefully evaluated Lamont-Doherty's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to airgun operations

that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of Lamont-Doherty's proposed measures, as well as other measures proposed by NMFS (i.e., special procedures for concentrations of large whales), NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an Incidental Harassment Authorization for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that we expect to be present in the proposed action area.

Lamont-Doherty submitted a marine mammal monitoring plan in section XIII of the Authorization application. NMFS, NSF, or Lamont-Doherty may modify or supplement the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and during other times and locations, in order to generate more data to contribute to the analyses mentioned later;

2. An increase in our understanding of how many marine mammals would be affected by seismic airguns and other active acoustic sources and the likelihood of associating those exposures with specific adverse effects, such as behavioral harassment, temporary or permanent threshold shift;

3. An increase in our understanding of how marine mammals respond to stimuli that we expect to result in take and how those anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (i.e., to be able to accurately predict received level, distance from source, and other pertinent information);
- b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (i.e., to be able to accurately predict received level, distance from source, and other pertinent information);
- c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;
4. An increased knowledge of the affected species; and
5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

Lamont-Doherty proposes to sponsor marine mammal monitoring during the present project to supplement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the Authorization. Lamont-Doherty understands that NMFS would review the monitoring plan and may require refinements to the plan. Lamont-Doherty planned the monitoring work as a self-contained project independent of any other related monitoring projects that may occur in the same regions at the same time. Further, Lamont-Doherty is prepared to discuss coordination of its monitoring program with any other related work that might be conducted by other groups working insofar as it is practical for Lamont-Doherty.

Vessel-Based Passive Acoustic Monitoring

Passive acoustic monitoring would complement the visual mitigation monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Passive acoustical monitoring can improve detection, identification, and localization of cetaceans when used in conjunction with visual observations. The passive acoustic monitoring would serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The acoustic observer would monitor the system in real time so that he/she can advise the visual observers if they acoustically detect cetaceans.

The passive acoustic monitoring system consists of hardware (*i.e.*, hydrophones) and software. The “wet end” of the system consists of a towed hydrophone array connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge, attached to the free end of the cable, typically towed at depths less than 20 m (65.6 ft). The *Langseth* crew would deploy the array from a winch located on the back deck. A deck cable would connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system would be located. The Panguard software amplifies, digitizes, and then processes the acoustic signals received by the hydrophones. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One acoustic observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system would be aboard the *Langseth* in addition to the other visual observers who would rotate monitoring duties. The acoustic observer would monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the *Langseth* is a digital hydrophone

streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One acoustic observer would monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The observer monitoring the acoustical data would be on shift for one to six hours at a time. The other observers would rotate as an acoustic observer, although the expert acoustician would be on passive acoustic monitoring duty more frequently.

When the acoustic observer detects a vocalization while visual observations are in progress, the acoustic observer on duty would contact the visual observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power down or shutdown, if required. The observer would enter the information regarding the call into a database. Data entry would include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.*, unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.*, clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. Acousticians record the acoustic detection for further analysis.

Observer Data and Documentation

Observers would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They would use the data to help better understand the impacts of the activity on marine mammals and to estimate numbers of animals potentially ‘taken’ by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the exclusion zone.

When an observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel,

sighting cue, apparent reaction to the airguns or vessel (*e.g.*, none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Observers will record all observations and power downs or shutdowns in a standardized format and will enter data into an electronic database. The observers will verify the accuracy of the data entry by computerized data validity checks during data entry and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown).
2. Information needed to estimate the number of marine mammals potentially taken by harassment, which Lamont-Doherty must report to the Office of Protected Resources.
3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where Lamont-Doherty would conduct the seismic study.
4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.
5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

Proposed Reporting

Lamont-Doherty would submit a report to us and to NSF within 90 days after the end of the cruise. The report would describe the operations conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above

the harassment threshold based on the observations.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Lamont-Doherty shall immediately cease the specified activities and immediately report the take to the Chief Permits and Conservation Division, Office of Protected Resources, NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Lamont-Doherty shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with Lamont-Doherty to determine what is necessary to minimize the likelihood of further

prohibited take and ensure MMPA compliance. Lamont-Doherty may not resume their activities until notified by us via letter, email, or telephone.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), Lamont-Doherty will immediately report the incident to the Chief Permits and Conservation Division, Office of Protected Resources, NMFS. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Lamont-Doherty to determine whether modifications in the activities are appropriate.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Lamont-Doherty would report the incident to the Chief Permits and Conservation Division, Office of Protected Resources, NMFS, within 24 hours of the discovery. Lamont-Doherty would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Acoustic stimuli (*i.e.*, increased underwater sound) generated during the operation of the airgun array may have the potential to result in the behavioral disturbance of some marine mammals and may have an even smaller potential to result in permanent threshold shift (non-lethal injury) of some marine mammals. NMFS expects that the proposed mitigation and monitoring measures would minimize the possibility of injurious or lethal takes. However, NMFS cannot discount the possibility (*albeit small*) that exposure to energy from the proposed survey could result in non-lethal injury (Level A harassment). Thus, NMFS proposes to authorize take by Level B harassment and Level A harassment resulting from the operation of the sound sources for the proposed seismic survey based upon the current acoustic exposure criteria shown in Table 4 subject to the limitations in take described in Table 5 later in this notice.

TABLE 4—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms)
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms)

NMFS' practice is to apply the 160 dB re: 1 μ Pa received level threshold for underwater impulse sound levels to predict whether behavioral disturbance that rises to the level of Level B harassment is likely to occur. NMFS' practice is to apply the 180 dB or 190 dB re: 1 μ Pa received level threshold for underwater impulse sound levels to predict whether permanent threshold shift (auditory injury), which we consider as Level A harassment is likely to occur.

Acknowledging Uncertainties in Estimating Take

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound and use that information to predict how many animals are taken. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, distinguishing between the

numbers of individuals harassed and the instances of harassment can be difficult to parse. Moreover, when one considers the duration of the activity, in the absence of information to predict the degree to which individual animals are likely exposed repeatedly on subsequent days, the simple assumption is that entirely new animals are exposed in every day, which results in a take estimate that in some circumstances overestimates the number of individuals harassed.

The following sections describe NMFS' methods to estimate take by incidental harassment. We base these estimates on the number of marine

mammals that potentially harassed by seismic operations with the airgun array during approximately 3,236 km (2,028 mi) of transect lines in the South Atlantic Ocean.

Modeled Number of Instances of Exposures: Lamont-Doherty would conduct the proposed seismic survey within the high seas in the South Atlantic Ocean. NMFS presents estimates of the anticipated numbers of instances that marine mammals could be exposed to sound levels greater than or equal to 160, 180, and 190 dB re: 1 μ Pa during the proposed seismic survey. Table 5 represents the numbers of instances of take that NMFS proposes to authorize for this survey within the South Atlantic Ocean.

NMFS' Take Estimate Method for Species with Density Information: In order to estimate the potential number of instances that marine mammals could be exposed to airgun sounds above the 160-dB Level B harassment threshold and the 180-dB Level A harassment thresholds, NMFS used the following approach for species with density estimates derived from the Navy's Atlantic Fleet Training and Testing Navy Marine Species Density Database maps for the survey area in the Southern Atlantic Ocean. NMFS used the highest density range for each species within the survey area.

(1) Calculate the total area that the *Langseth* would ensonify above the 160-dB Level B harassment threshold and above the 180-dB Level A harassment threshold for cetaceans within a 24-hour period. This calculation includes a daily ensonified area of approximately 1,377 square kilometers (km^2) (532 square miles [mi^2]) for the five OBS tracklines and 1,839 km^2 (710 mi^2) for the MCS trackline based on the *Langseth* traveling approximately 150 km [93 mi] in one day). Generally, the *Langseth* travels approximately 137 km (85 mi) in one day while conducting a seismic survey, thus, NMFS' estimate of a daily ensonified area based on 150 km is an estimation of the theoretical maximum that the *Langseth* could travel within 24 hours.

(2) Multiply each daily ensonified area above the 160-dB Level B harassment threshold by the species' density (animals/ km^2) to derive the predicted number of instances of

exposures to received levels greater than or equal to 160-dB re: 1 μ Pa on a given day;

(3) Multiply each product (*i.e.*, the expected number of instances of exposures within a day) by the number of survey days that includes a 25 percent contingency (*i.e.*, a total of six days for the five OBS tracklines and a total of 22 days for the MCS trackline) to derive the predicted number of instances of exposures over the duration of the survey;

(4) Multiply the daily ensonified area by each species-specific density to derive the predicted number of instances of exposures to received levels greater than or equal to 180-dB re: 1 μ Pa for cetaceans on a given day (*i.e.*, Level A takes). This calculation includes a daily ensonified area of approximately 207 km^2 (80 mi^2) for the five OBS tracklines and 281 km^2 (108 mi^2) for the MCS trackline.

(5) Multiply each product by the number of survey days that includes a 25 percent contingency (*i.e.*, a total of six days for the five OBS tracklines and a total of 22 days for the MCS trackline). Subtract that product from the predicted number of instances of exposures to received levels greater than or equal to 160-dB re: 1 μ Pa on a given day to derive the number of instances of exposures estimated to occur between 160 and 180-dB threshold (*i.e.*, Level B takes).

In many cases, this estimate of instances of exposures is likely an overestimate of the number of individuals that are taken, because it assumes 100 percent turnover in the area every day, (*i.e.*, that each new day results in takes of entirely new individuals with no repeat takes of the same individuals over the 22-day period (28 days with contingency). It is difficult to quantify to what degree this method overestimates the number of individuals potentially taken. Except as described later for a few specific species, NMFS uses this number of instances as the estimate of individuals (and authorized take) even though NMFS is aware that the number may be somewhat high due to the use of the maximum density estimate from the NMSDD.

Take Estimates for Species with Less than One Instance of Exposure: Using the approach described earlier, the

model generated instances of take for some species that were less than one over the 28-day duration. Those species include the humpback, blue, Bryde's, pygmy sperm, and dwarf sperm whale. NMFS used data based on dedicated survey sighting information from the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, and 2013 (AMAPPS, 2010, 2011, 2013) to estimate take and assumed that Lamont-Doherty could potentially encounter one group of each species during the proposed seismic survey. NMFS believes it is reasonable to use the average (mean) group size (weighted by effort and rounded up) from the AMMAPS surveys for humpback whale (3), blue whale (2), Bryde's whale (2), pygmy sperm whale (2), and dwarf sperm whale (2) to derive a reasonable estimate of take for eruptive occurrences.

Take Estimates for Species with No Density Information: Density information for the Southern right whale, southern elephant seal, and Subantarctic fur seal in the South Atlantic Ocean is data poor or non-existent. When density estimates were not available, NMFS used data based on dedicated survey sighting information from the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, and 2013 (AMAPPS, 2010, 2011, 2013) to estimate take for the three species. NMFS assumed that Lamont-Doherty could potentially encounter one group of each species during the seismic survey. NMFS believes it is reasonable to use the average (mean) group size (weighted by effort and rounded up) for North Atlantic right whales (3) from the AMMAPS surveys for the Southern right whale and the mean group size for unidentified seals (2) from the AMMAPS surveys for southern elephant and Subantarctic fur seals multiplied by 28 days to derive an estimate of take from a potential encounter.

NMFS used sighting information from a survey off Namibia, Africa (Rose and Payne, 1991) to estimate a mean group size for southern right whale dolphins (58) and also multiplied that estimate by 28 days to derive an estimate of take from a potential encounter with that species.

TABLE 5—DENSITIES AND/OR MEAN GROUP SIZE, AND ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS AND POPULATION PERCENTAGES EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB re: 1 μ Pa OVER 28 DAYS DURING THE PROPOSED SEISMIC SURVEY IN THE SOUTH ATLANTIC OCEAN

[January through March, 2016]

Species	Density estimate ¹	Modeled number of instances of exposures to sound levels $\geq$ 160, 180, and 190 dB ²	Proposed Level A take ³	Proposed Level B take ³	Percent of population ⁴	Population trend ⁵
Antarctic minke whale	0.054983	2,276,396, –	396	2,276	0.519	Unknown.
Blue whale	0.000032	4, 0, –	0	4	2.074	Unknown.
Bryde's whale	0.000262	56, 0, –	0	56	0.128	Unknown.
Common minke whale	0.054983	2,276,396, –	396	2,276	0.519	Unknown.
Fin whale	0.002888	106, 28, –	28	106	0.609	Unknown.
Humpback whale	0.000078	6, 0, –	0	6	0.200	↑
Sei whale	0.002688	106, 28, –	28	106	1.340	Unknown.
Southern right whale	NA	84, 0, –	0	84	0.700	Unknown.
Sperm whale	0.001214	50, 0, –	0	50	0.014	Unknown.
Dwarf sperm whale	0.000041	4, 0, –	0	4	1.480	Unknown.
Pygmy sperm whale	0.000021	4, 0, –	0	4	1.480	Unknown.
Cuvier's beaked whale	0.003831	156, 28, –	28	156	0.031	Unknown.
Andrew's beaked whale	0.000511	28, 0, –	0	28	0.005	Unknown.
Arnoux's beaked whale	0.000956	28, 0, –	0	28	0.005	Unknown.
Blainville's beaked whale	0.000663	28, 0, –	0	28	0.005	Unknown.
Gervais' beaked whale	0.001334	56, 0, –	0	56	0.009	Unknown.
Gray's beaked whale	0.000944	28, 0, –	0	28	0.005	Unknown.
Hector's beaked whale	0.000246	0, 0, –	0	0	0.000	Unknown.
Shepherd's beaked whale	0.000816	28, 0, –	0	28	0.005	Unknown.
Strap-toothed beaked whale	0.000638	28, 0, –	0	28	0.005	Unknown.
True's beaked whale	0.000876	28, 0, –	0	28	0.005	Unknown.
Southern bottlenose whale	0.000917	28, 0, –	0	28	0.005	Unknown.
Bottlenose dolphin	0.020744	848, 156, –	156	848	0.167	Unknown.
Rough-toothed dolphin	0.000418	22, 0, –	0	22	8.118	Unknown.
Pantropical spotted dolphin	0.003674	156, 28, –	28	156	5.521	Unknown.
Striped dolphin	0.174771	7,208, 1,294, –	1,294	7,208	15.513	Unknown.
Fraser's dolphin	0.001568	56, 0, –	0	56	0.019	Unknown.
Spinner dolphin	0.006255	262, 50, –	50	262	0.026	Unknown.
Atlantic spotted dolphin	0.023756	982, 184, –	184	982	2.608	Unknown.
Clymene dolphin	0.000258	0, 0, –	0	0	0.000	Unknown.
Risso's dolphin	0.037399	1,540, 290, –	290	1,540	8.844	Unknown.
Long-beaked common dolphin	0.000105	0, 0, –	0	0	0.000	Unknown.
Short-beaked common dolphin	0.129873	5,356, 954, –	954	5,356	3.637	Unknown.
Southern right whale dolphin	NA	1,624, 0, –	0	1,624	Unknown	Unknown.
Melon-headed whale	0.006285	262, 50, –	50	262	0.624	Unknown.
Pygmy killer whale	0.001039	50, 0, –	0	50	1.395	Unknown.
False killer whale	0.000158	0, 0, –	0	0	0.000	Unknown.
Killer whale	0.003312	134, 28, –	28	134	0.324	Unknown.
Long-finned pilot whale	0.007614	318, 56, –	56	318	0.187	Unknown.
Short-finned pilot whale	0.015616	636, 106, –	106	636	0.371	Unknown.
Southern Elephant Seal	NA	4, 0, 0	0	4	0.001	Unknown.
Subantarctic fur seal	NA	4, 0, 0	0	4	0.001	Unknown.

¹ Densities (where available) are expressed as number of individuals per km². Densities estimated from the Navy's Atlantic Fleet Training and Testing Navy Marine Species Density Database maps for the survey area in the Southern Atlantic Ocean. NA = Not available.

² See preceding text for information on NMFS' take estimate calculations. NA = Not applicable.

³ Modeled instances of exposures include adjustments for species with no density information. The Level A estimates are overestimates of predicted impacts to marine mammals as the estimates do not take into consideration the required mitigation measures for shutdowns or power downs if a marine mammal is likely to enter the 180 dB exclusion zone while the airguns are active.

⁴ Table 2 in this notice lists the stock species abundance estimates used in calculating the percentage of the population.

⁵ Population trend information from Waring *et al.*, 2015. ↑ = Increasing. ↓ = Decreasing. Unknown = Insufficient data.

Lamont-Doherty did not estimate any additional take from sound sources other than airguns. NMFS does not expect the sound levels produced by the echosounder and sub-bottom profiler to exceed the sound levels produced by the airguns. Lamont-Doherty will not operate the multibeam echosounder and sub-bottom profiler during transits to and from the survey area, (*i.e.*, when the

airguns are not operating) and in between transits to each of the five OBS tracklines, and, therefore, NMFS does not anticipate additional takes from these sources in this particular case.

NMFS considers the probability for entanglement of marine mammals as low because of the vessel speed and the monitoring efforts onboard the survey vessel. Therefore, NMFS does not

believe it is necessary to authorize additional takes for entanglement at this time.

The *Langseth* will operate at a relatively slow speed (typically 4.6 knots [8.5 km/h; 5.3 mph]) when conducting the survey. Protected species observers would monitor for marine mammals, which would trigger mitigation measures, including vessel

avoidance where safe. Therefore, NMFS does not anticipate nor do we authorize takes of marine mammals from vessel strike.

There is no evidence that the planned survey activities could result in serious injury or mortality within the specified geographic area for the requested proposed Authorization. The required mitigation and monitoring measures would minimize any potential risk for serious injury or mortality.

Preliminary Analysis and Determinations

Negligible Impact

Negligible impact is “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival” (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, NMFS considers:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of harassment; and
- The context in which the takes occur (*e.g.*, impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.*, depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental takes.

To avoid repetition, our analysis applies to all the species listed in Table

5, given that NMFS expects the anticipated effects of the seismic airguns to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Given the required mitigation and related monitoring, NMFS does not anticipate that serious injury or mortality would occur as a result of Lamont-Doherty’s proposed seismic survey in the South Atlantic Ocean. Thus the proposed authorization does not authorize any mortality.

NMFS’ predicted estimates for Level A harassment take for some species are likely overestimates of the injury that will occur. NMFS expects that successful implementation of the required visual and acoustic mitigation measures would avoid Level A take in some instances. Also, NMFS expects that some individuals would avoid the source at levels expected to result in injury. Nonetheless, although NMFS expects that Level A harassment is unlikely to occur at the numbers proposed to be authorized, because it is difficult to quantify the degree to which the mitigation and avoidance will reduce the number of animals that might incur PTS, we are proposing to authorize (and analyze) the modeled number of Level A takes, which does not take the mitigation or avoidance into consideration. However, because of the constant movement of the *Langseth* and the animals, as well as the fact that the boat is not staying in any one area in which individuals would be expected to concentrate for any long amount of time (*i.e.*, since the duration of exposure to loud sounds will be relatively short), we anticipate that any PTS incurred, would be in the form of only a small degree of permanent threshold shift and not total deafness.

Of the marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, the following species are listed as endangered under the ESA: blue, fin, humpback, sei, Southern right whale, and sperm whales. The western north Atlantic population of humpback whales is known to be increasing. The other marine mammal species that may be taken by harassment during Lamont-Doherty’s seismic survey program are not listed as threatened or endangered under the ESA.

Cetaceans. Odontocete reactions to seismic energy pulses are usually thought to be limited to shorter

distances from the airgun(s) than are those of mysticetes, in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. Given sufficient notice through relatively slow ship speed, NMFS generally expects marine mammals to move away from a noise source that is annoying prior to becoming potentially injurious, although Level A takes for a small group of species are proposed for authorization here.

Potential impacts to marine mammal habitat were discussed previously in this document (see the “Anticipated Effects on Habitat” section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect annual rates of recruitment or survival of marine mammals in the area. Based on the size of the South Atlantic Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area will be minor based on the fact that other feeding areas exist elsewhere. Taking into account the planned mitigation measures, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of “Level B harassment.” Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of marine mammal habitat will be affected at any time, and other areas within the South Atlantic Ocean would be available for necessary biological functions.

Pinnipeds. During foraging trips, extralimital pinnipeds may not react at all to the sound from the proposed survey or may alert, ignore the stimulus, change their behavior, or avoid the immediate area by swimming away or diving. Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic. Research and observations show that pinnipeds in the water are tolerant of anthropogenic noise and activity. They may react in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the exposure. Significant behavioral effects are more likely at higher received levels within a few kilometers of the source and activities involving sound from the proposed survey would not occur near

any haulout areas where resting behaviors occur.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.*, 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). While NMFS anticipates that the seismic operations would occur on consecutive days, the estimated duration of the survey would last no more than 28 days but would increase sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of most of the marine mammals within the proposed survey area), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

For reasons stated previously in this document and based on the following factors, Lamont-Doherty's specified activities are not likely to cause long-term behavioral disturbance, serious injury, or death, or other effects that would be expected to adversely affect reproduction or survival of any individuals. They include:

- The anticipated impacts of Lamont-Doherty's survey activities on marine mammals are temporary behavioral changes due, primarily, to avoidance of the area;
- The likelihood that, given the constant movement of boat and animals and the nature of the survey design (not concentrated in areas of high marine mammal concentration), PTS incurred would be of a low level;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the operation of the airgun(s) to avoid acoustic harassment;
- The expectation that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species that serve as prey species for marine mammals, and therefore consider the potential impacts to marine mammal habitat minimal; and
- The knowledge that the survey is taking place in the open ocean and not located within an area of biological importance for breeding, calving, or foraging for marine mammals.

Table 5 in this document outlines the number of requested Level A and Level B harassment takes that we anticipate as a result of these activities.

Required mitigation measures, such as special shutdowns for large whales, vessel speed, course alteration, and visual monitoring would be implemented to help reduce impacts to marine mammals. Based on the analysis herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that Lamont-Doherty's proposed seismic survey would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that Lamont-Doherty's activities could potentially affect, by Level B harassment, 38 species of marine mammals under our jurisdiction. NMFS estimates that Lamont-Doherty's activities could potentially affect, by Level A harassment, up to 16 species of marine mammals under our jurisdiction.

For each species, the numbers of take being proposed for authorization are small numbers relative to the population sizes: less than 16 percent for striped dolphins, less than 8 percent of Risso's dolphins, less than 6 percent for pantropical spotted dolphins, and less than 4 percent for all other species. NMFS has provided the regional population and take estimates for the marine mammal species that may be taken by Level A and Level B harassment in Table 5 in this notice. NMFS finds that the proposed incidental take described in Table 5 for the proposed activity would be limited to small numbers relative to the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are six marine mammal species listed as endangered under the Endangered Species Act that may occur in the proposed survey area. Under section 7 of the ESA, NSF has initiated formal consultation with NMFS on the proposed seismic survey. NMFS (*i.e.*, National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) will also consult internally with NMFS on the proposed issuance of an Authorization under section 101(a)(5)(D) of the MMPA. NMFS and the NSF will conclude the consultation prior to a

determination on the proposed issuance of the Authorization.

National Environmental Policy Act (NEPA)

NSF has prepared a draft environmental analysis titled, *Draft Environmental Analysis of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the South Atlantic Ocean, Austral Summer 2016*. NMFS has posted this document on our Web site concurrently with the publication of this notice. NMFS has independently evaluated the draft environmental analysis and has prepared a separate draft Environmental Assessment (DEA) titled, *Proposed Issuance of an Incidental Harassment Authorization to Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the South Atlantic Ocean, January–March 2016*. Information in Lamont-Doherty's application, NSF's Draft environmental analysis, NMFS' DEA and this notice collectively provide the environmental information related to proposed issuance of an Authorization for public review and comment. NMFS will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the proposed Authorization request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes issuing an Authorization to Lamont-Doherty for conducting a seismic survey in the South Atlantic Ocean, early January through March 31, 2016 provided they incorporate the proposed mitigation, monitoring, and reporting requirements.

Draft Proposed Authorization

This section contains the draft text for the proposed Authorization. NMFS proposes to include this language in the Authorization if issued.

Incidental Harassment Authorization

We hereby authorize the Lamont-Doherty Earth Observatory (Lamont-Doherty), Columbia University, P.O. Box 1000, 61 Route 9W, Palisades, New York 10964–8000, under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107, to incidentally harass small numbers of marine mammals incidental to a marine geophysical survey conducted by the R/V *Marcus G. Langseth* (Langseth) marine geophysical survey in the South Atlantic Ocean January through March 2016.

1. Effective Dates

This Authorization is valid from early January through March 31, 2016.

2. Specified Geographic Region

This Authorization is valid only for specified activities associated with the R/V *Marcus G. Langseth's* (Langseth) seismic operations as specified in Lamont-Doherty's Incidental Harassment Authorization (Authorization) application and environmental analysis in the following specified geographic area:

a. in the South Atlantic Ocean, located approximately between 10–35 °W, 27–33 °S as specified in Lamont-Doherty's application and the National Science Foundation's environmental analysis.

3. Species Authorized and Level of Takes

a. This authorization limits the incidental taking of marine mammals, by harassment only, to the following species in the area described in Table 5 in this notice.

i. During the seismic activities, if the Holder of this Authorization encounters any marine mammal species that are not listed in Condition 3 for authorized taking and are likely to be exposed to sound pressure levels greater than or equal to 160 decibels (dB) re: 1 µPa, then the Holder must alter speed or course or shut-down the airguns to avoid take.

b. The taking by serious injury or death of any of the species listed in Condition 3 or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

c. This Authorization limits the methods authorized for taking by harassment to the following acoustic sources:

i. a sub-airgun array with a total capacity of 6,600 in³ (or smaller);

4. Reporting Prohibited Take

The Holder of this Authorization must report the taking of any marine mammal in a manner prohibited under this Authorization immediately to the Office of Protected Resources, National Marine Fisheries Service, at 301–427–8401 and/or by email to the Chief, Permits and Conservation Division.

5. Cooperation

We require the Holder of this Authorization to cooperate with the Office of Protected Resources, National Marine Fisheries Service, and any other Federal, state, or local agency

monitoring the impacts of the activity on marine mammals.

6. Mitigation and Monitoring Requirements

We require the Holder of this Authorization to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable adverse impact on affected marine mammal species or stocks:

Visual Observers

a. Utilize two, National Marine Fisheries Service-qualified, vessel-based Protected Species Visual Observers (visual observers) to watch for and monitor marine mammals near the seismic source vessel during daytime airgun operations (from nautical twilight-dawn to nautical twilight-dusk) and before and during start-ups of airguns day or night.

i. At least one visual observer will be on watch during meal times and restroom breaks.

ii. Observer shifts will last no longer than four hours at a time.

iii. Visual observers will also conduct monitoring while the *Langseth* crew deploy and recover the airgun array and streamers from the water.

iv. When feasible, visual observers will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavioral reactions during, between, and after airgun operations.

v. The *Langseth's* vessel crew will also assist in detecting marine mammals, when practicable. Visual observers will have access to reticle binoculars (7 × 50 Fujinon), and big-eye binoculars (25 × 150).

Exclusion Zones

b. Establish a 180-decibel (dB) or 190-dB exclusion zone for cetaceans and pinnipeds, respectively, before starting the airgun subarray (6,660 in³); and a 180-dB or 190-dB exclusion zone for cetaceans and pinnipeds, respectively for the single airgun (40 in³). Observers will use the predicted radius distance for the 180-dB or 190-dB exclusion zones for cetaceans and pinnipeds.

Visual Monitoring at the Start of Airgun Operations

c. Monitor the entire extent of the exclusion zones for at least 30 minutes (day or night) prior to the ramp-up of airgun operations after a shutdown.

d. Delay airgun operations if the visual observer sees a cetacean within the 180-dB exclusion zone for cetaceans or 190-dB exclusion zone for pinnipeds

until the marine mammal(s) has left the area.

i. If the visual observer sees a marine mammal that surfaces, then dives below the surface, the observer shall wait 30 minutes. If the observer sees no marine mammals during that time, he/she should assume that the animal has moved beyond the 180-dB exclusion zone for cetaceans or 190-dB exclusion zone for pinnipeds.

ii. If for any reason the visual observer cannot see the full 180-dB exclusion zone for cetaceans or the 190-dB exclusion zone for pinnipeds for the entire 30 minutes (*i.e.*, rough seas, fog, darkness), or if marine mammals are near, approaching, or within zone, the *Langseth* may not resume airgun operations.

iii. If one airgun is already running at a source level of at least 180 dB re: 1 µPa or 190 dB re: 1 µPa, the *Langseth* may start the second gun—and subsequent airguns—without observing relevant exclusion zones for 30 minutes, provided that the observers have not seen any marine mammals near the relevant exclusion zones (in accordance with Condition 6(b)).

Passive Acoustic Monitoring

e. Utilize the passive acoustic monitoring (PAM) system, to the maximum extent practicable, to detect and allow some localization of marine mammals around the *Langseth* during all airgun operations and during most periods when airguns are not operating. One visual observer and/or bioacoustician will monitor the PAM at all times in shifts no longer than 6 hours. A bioacoustician shall design and set up the PAM system and be present to operate or oversee PAM, and available when technical issues occur during the survey.

f. Do and record the following when an observer detects an animal by the PAM:

i. notify the visual observer immediately of a vocalizing marine mammal so a power-down or shut-down can be initiated, if required;

ii. enter the information regarding the vocalization into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position, water depth when first detected, bearing if determinable, species or species group (*e.g.*, unidentified dolphin, sperm whale, monk seal), types and nature of sounds heard (*e.g.*, clicks, continuous, sporadic, whistles, creaks, burst pulses,

strength of signal, etc.), and any other notable information.

Ramp-Up Procedures

g. Implement a “ramp-up” procedure when starting the airguns at the beginning of seismic operations or any time after the entire array has been shutdown, which means start the smallest gun first and add airguns in a sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5-minute period. During ramp-up, the observers will monitor the exclusion zone, and if marine mammals are sighted, a course/speed alteration, power-down, or shutdown will be implemented as though the full array were operational.

Recording Visual Detections

h. Visual observers must record the following information when they have sighted a marine mammal:

- i. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and
- ii. Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or shut-down), Beaufort sea state and wind force, visibility, and sun glare; and
- iii. The data listed under 6(f)(ii) at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

Speed or Course Alteration

i. Alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the exclusion zone, the Holder of this Authorization will implement further mitigation measures, such as a shutdown.

Power-Down Procedures

j. Power down the airguns if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zones. A power-down means reducing the number of operating airguns to a single operating 40 in³ airgun. This would reduce the

exclusion zone to the degree that the animal(s) is outside of it.

Resuming Airgun Operations after a Power-Down

k. Following a power-down, if the marine mammal approaches the smaller designated exclusion zone, the airguns must then be completely shut-down. Airgun activity will not resume until the observer has visually observed the marine mammal(s) exiting the exclusion zone and is not likely to return, or has not been seen within the exclusion zone for 15 minutes for species with shorter dive durations (small odontocetes) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

l. Following a power-down and subsequent animal departure, the *Langseth* may resume airgun operations at full power. Initiation requires that the observers can effectively monitor the full exclusion zones described in Condition 6(b). If the observer sees a marine mammal within or about to enter the relevant zones then the *Langseth* will implement a course/speed alteration, power-down, or shutdown.

Shutdown Procedures

m. Shutdown the airgun(s) if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zone. A shutdown means that the *Langseth* turns off all operating airguns.

Resuming Airgun Operations After a Shutdown

n. Following a shutdown, if the observer has visually confirmed that the animal has departed the 180-dB zone for cetaceans or the 190-dB zone for pinnipeds within a period of less than or equal to 8 minutes after the shutdown, then the *Langseth* may resume airgun operations at full power.

o. If the observer has not seen the animal depart the 180-dB zone for cetaceans or the 190-dB zone for pinnipeds, the *Langseth* shall not resume airgun activity until 15 minutes has passed for species with shorter dive times (i.e., small odontocetes and pinnipeds) or 30 minutes has passed for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales). The *Langseth* will follow the ramp-up procedures described in Conditions 6(g).

Survey Operations at Night

p. The *Langseth* may continue marine geophysical surveys into night and low-

light hours if the Holder of the Authorization initiates these segment(s) of the survey when the observers can view and effectively monitor the full relevant exclusion zones.

q. This Authorization does not permit the Holder of this Authorization to initiate airgun array operations from a shut-down position at night or during low-light hours (such as in dense fog or heavy rain) when the visual observers cannot view and effectively monitor the full relevant exclusion zones.

Mitigation Airgun

s. The *Langseth* may operate a small-volume airgun (i.e., mitigation airgun) during turns and maintenance at approximately one shot per minute. The *Langseth* would not operate the small-volume airgun for longer than three hours in duration during turns. During turns or brief transits between seismic tracklines, one airgun would continue to operate.

Special Procedures for Concentrations of Large Whales

t. The *Langseth* will power-down the array and avoid concentrations of large whales if possible (i.e., avoid exposing concentrations of these animals to sounds greater than 160 dB re: 1 μ Pa). For purposes of the survey, a concentration or group of whales will consist of six or more individuals visually sighted that do not appear to be traveling (e.g., feeding, socializing, etc.). The *Langseth* will follow the procedures described in Conditions 6(k) for resuming operations after a power down.

7. Reporting Requirements

This Authorization requires the Holder of this Authorization to:

a. Submit a draft report on all activities and monitoring results to the Office of Protected Resources, National Marine Fisheries Service, within 90 days of the completion of the *Langseth's* cruise. This report must contain and summarize the following information:

- i. Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings.
- ii. Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated seismic activity (number of shutdowns), observed throughout all monitoring activities.
- iii. An estimate of the number (by species) of marine mammals with known exposures to the seismic activity (based on visual observation) at received

levels greater than or equal to 160 dB re: 1 μ Pa and/or 180 dB re 1 μ Pa for cetaceans and 190-dB re 1 μ Pa for pinnipeds and a discussion of any specific behaviors those individuals exhibited.

iv. An estimate of the number (by species) of marine mammals with estimated exposures (based on modeling results) to the seismic activity at received levels greater than or equal to 160 dB re: 1 μ Pa and/or 180 dB re 1 μ Pa for cetaceans and 190-dB re 1 μ Pa for pinnipeds with a discussion of the nature of the probable consequences of that exposure on the individuals.

v. A description of the implementation and effectiveness of the: (A) terms and conditions of the Biological Opinion's Incidental Take Statement (attached); and (B) mitigation measures of the Incidental Harassment Authorization. For the Biological Opinion, the report will confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on Endangered Species Act listed marine mammals.

b. Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, within 30 days after receiving comments from us on the draft report. If we decide that the draft report needs no comments, we will consider the draft report to be the final report.

8. Reporting Prohibited Take

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Lamont-Doherty shall immediately cease the specified activities and immediately report the take to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email. The

report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Lamont-Doherty shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with Lamont-Doherty to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Lamont-Doherty may not resume their activities until notified by us via letter, email, or telephone.

9. Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), Lamont-Doherty will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Lamont-Doherty to determine whether modifications in the activities are appropriate.

10. Reporting an Injured or Dead Marine Mammal Unrelated to the Activities

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Lamont-Doherty would report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email, within 24 hours of the discovery. Lamont-Doherty would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

11. Endangered Species Act Biological Opinion and Incidental Take Statement

Lamont-Doherty is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to the Endangered Species Act Biological Opinion issued to the National Science Foundation and NMFS' Office of Protected Resources, Permits and Conservation Division (attached). A copy of this Authorization and the Incidental Take Statement must be in the possession of all contractors and protected species observers operating under the authority of this Incidental Harassment Authorization.

Request for Public Comments

NMFS invites comments on our analysis, the draft authorization, and any other aspect of the Notice of proposed Authorization for Lamont-Doherty's activities. Please include any supporting data or literature citations with your comments to help inform our final decision on Lamont-Doherty's request for an application.

Dated: November 24, 2015.

Perry F. Gayaldo,
Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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Part IV

Securities and Exchange Commission

Bloomberg STP LLC; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption From Registration as a Clearing Agency; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76514; File Nos. 600-33, 600-34]

Bloomberg STP LLC; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption From Registration as a Clearing Agency

November 24, 2015

I. Introduction

On March 15, 2013, Bloomberg STP LLC (“BSTP”) filed with the Securities and Exchange Commission (“Commission”) an application on Form CA-1 for an exemption from registration as a clearing agency (“BSTP application”) pursuant to Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17Ab2-1 thereunder. BSTP amended the BSTP application on May 7, 9, and 10, July 11, August 8, September 18, and November 21, 2013, December 19, 2014, and January 22, 2015.¹ BSTP intends to provide a matching service² and an electronic trade confirmation (“ETC”) service, and accordingly the BSTP application seeks an exemption from registration as a clearing agency. Notice of the BSTP application was published for comment in the **Federal Register** on March 5, 2015.³

On April 15, 2013, SS&C Technologies, Inc. (“SS&C”) filed with the Commission an application on Form CA-1 for an exemption from registration as a clearing agency (“SS&C application”) pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder. SS&C amended the SS&C application on August 12, 2013, December 23, 2014, March 30, 2015, and November 9, 2015.⁴ SS&C intends to

provide a matching and ETC service, and accordingly the SS&C application seeks an exemption from registration as a clearing agency.⁵ Notice of the SS&C application was published for comment in the **Federal Register** on April 28, 2015.⁶

In all, the Commission received thirty comment letters in response to the BSTP and SS&C applications. Among these comment letters, the Commission received twenty-seven in response to the BSTP application, including two from BSTP itself, and three comment letters on the SS&C application, including one from SS&C itself.⁷ After

securities matched is 1% of the U.S. aggregate daily share volume with a representation stating that SS&C understands that in offering its ETC services and matching services it will be defined as an “SCI entity” under Regulation Systems, Compliance, and Integrity (“Regulation SCI”) and, as such, that it will operate in compliance with applicable obligations under Regulation SCI. *See infra* Part III.B.8.

⁵ The Commission understands that the applicants included descriptions of their ETC services in their applications for the sake of completeness in describing their proposed services, as well as in connection with FINRA Rule 11860, which contains specific references to confirmation and affirmation services.

⁶ *See* Exchange Act Release No. 34-74794 (Apr. 23, 2015), 80 FR 23618 (Apr. 28, 2015) (“SS&C notice”).

⁷ *See* letters from James Wallin, Senior Vice President—Fixed Income, AllianceBernstein (Apr. 9, 2015) (“AllianceBernstein”); Diane C. Altieri, White Oak Global Advisors, LLC (Mar. 24, 2015) (“Altieri”); Jon Ambos (Mar. 29, 2015) (“Ambos”); Anonymous (Mar. 16, 2015) (“Anonymous”); Benjamin Macdonald, President, Bloomberg STP LLC (August 26, 2015) (“BSTP August letter”); Ben Macdonald, President, Bloomberg STP LLC (May 21, 2015) (“BSTP May letter”); M. Subramanian, Capital Market Solutions—Wipro Limited (Mar. 26, 2015) (“Capital Market Solutions”); Thomas Murphy, Managing Director, Citigroup Global Markets Inc., and Automated Trading Desk Financial Services, LLC (Apr. 6, 2015) (“Citi”); James Connolly, Managing Director, Head of U.S. Broker Dealer Operations, RBC Capital Markets, LLC (Mar. 16, 2015) (“Connolly”); Joseph Denci, Vice President COO, Scotia Capital (USA) Inc. (Mar. 31, 2015) (“Denci”); Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (Sept. 14, 2015) (“DTCC September letter”); Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (June 23, 2015) (“DTCC June letter”); Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (May 28, 2015) (“DTCC May letter”); Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (Apr. 6, 2015) (“DTCC April letter”); Frank D. Dore, Head of Securities Operations, Acadian Asset Management LLC (Apr. 1, 2015) (“Dore”); Peter J. Durant (Mar. 26, 2015) (“Durant”); David Pearson, Head of Post-Trade Strategy, Fidessa (Apr. 3, 2015) (“Fidessa”); Bruce James, Managing Director and Chief Operations Officer, Amherst Pierpont Securities LLC (Mar. 10, 2015) (“James”); James Lang, Managing Director, Cedar Hill Capital Partners (Mar. 26, 2015) (“Lang”); Jerome Matthews, Vice President, Investment Operations, Prudential Fixed Income (Apr. 6, 2015) (“Matthews”); Shawn McCafferty (Mar. 11, 2015) (“McCafferty”); Barbara Naratil, COO (Mar. 31 and

careful review of these comment letters and the details and information in the BSTP and SS&C applications (including their representations), the Commission concludes that it has sufficient information to decide whether BSTP and SS&C should be granted exemptions. This order grants BSTP and SS&C each an exemption from registration as a clearing agency to provide matching and ETC services, subject to certain conditions and limitations described below.

II. Summary of Applicants’ Organization and Proposed Services

A. BSTP

BSTP is a limited liability company organized under the laws of the State of Delaware and is wholly-owned by Bloomberg L.P. (“BLP”).⁸ BLP is a global business and financial information and news company headquartered in New York with offices around the world. BLP’s principal product is the BLOOMBERG PROFESSIONAL service, which provides financial market information, data, news and analytics to banks, broker-dealers, institutional investors, governmental bodies, and other business and financial professionals worldwide.

The BSTP application states that BSTP will enter into a Software License Agreement and a License and Services Agreement with BLP. Under the terms and conditions of such agreements, BLP will provide BSTP with software, hardware, administrative, operational, and other support services, and BSTP will retain ultimate legal responsibility for its operations. BSTP has also established a board of directors to oversee its operations, and the BSTP application states that it will establish

Apr. 6, 2015) (“Naratil”); Russell H. Stamey, Senior Vice President, The Northern Trust Co. (Apr. 6, 2015) (“Northern Trust”); Paul Puskuldjian, Chief Operating Officer, Kinetix Trading Solutions, Inc. (Mar. 11, 2015) (“Puskuldjian”); Terrence J. Ransford, Senior Vice President, Northern Trust Securities, Inc. (Mar. 18, 2015) (“Ransford”); Fredrick Scuteri, Vice President, Head of Trade Operations, AQR Capital Management, LLC (Mar. 16, 2015) (“Scuteri”); Timothy W. Cameron, Managing Director, Asset Management Group—Head, and Elisa Nuottajarvi, Asset Management Group, The Asset Managers Forum, Securities Industry and Financial Markets Association (Apr. 2, 2015) (“SIFMA AMF”); David I. Goldstein, Senior Counsel, SS&C Technologies, Inc. (July 20, 2015) (“SS&C letter”); Nick Solinger, Head of Product Strategy and Chief Marketing Officer, Traiana, Inc. (Apr. 6, 2015) (“Traiana”). Copies of the comment letters are available at <http://www.sec.gov/comments/600-33/600-33.shtml> and <http://www.sec.gov/comments/600-34/600-34.shtml>.

⁸ The Commission notes that any proposed changes to either applicant’s organization or its proposed ETC and matching service will require an amendment to the applicant’s Form CA-1.

¹ A copy of the BSTP application is available at <http://www.sec.gov/rules/other/2015/34-74394-form-ca-1.pdf>.

² The term “matching service” as used herein means an electronic service to centrally match trade information between a broker-dealer and its institutional customer.

³ *See* Exchange Act Release No. 34-74394 (Feb. 27, 2015), 80 FR 12048 (Mar. 5, 2015) (“BSTP notice”).

⁴ A copy of the SS&C application is available at <http://www.sec.gov/rules/other/2015/34-74794-form-ca-1.pdf>. The November 9, 2015 amendment to the SS&C application removed the representation that SS&C would notify the Commission and seek a volume limit amendment to its Form CA-1 at least 180 days before it anticipates its volume for U.S. securities matched to reach one percent of the U.S. aggregate daily share volume. *See infra* Part III.B.4.iv.

In addition, in the November 9, 2015 amendment SS&C replaced a representation stating that SS&C shall comply with the White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System before its volume for U.S.

an advisory board consisting of industry members and users of the matching service, including representatives from sell-side firms, buy-side institutions, and custodians.

The BSTP application proposes a matching service that will compare post-trade information from a broker-dealer (the firm) and the broker-dealer's institutional customer and reconcile such information to generate an affirmed confirmation, operating as follows according to the BSTP application:

1. A customer routes an order to its firm.
2. The firm executes the order and then sends a notice of execution ("NOE") to the customer.
3. For voice executed trades, the customer affirms to the firm the trade details contained in the NOE. For trades executed electronically, the electronic trading platform records the trade in the blotters of the customer and the firm.
4. The customer sends to the matching service, the firm, and the customer's custodian allocation information for the trade.
5. The firm then submits to the matching service trade data corresponding to each allocation, including settlement instructions and, as applicable, commissions, taxes, and fees.
6. The matching service next compares the customer's allocation information (containing multiple fields of data) with the firm's trade data to determine whether the information contained in each field matches. If all required fields match, the matching service generates a matched confirmation and sends it to the firm, the customer, and other entities designated by the customer (e.g., the customer's custodian). The matching service will typically perform this step in less than one second.

7. After the matching service creates the matched confirmation, the matching service submits it to The Depository Trust Company ("DTC") as an "affirmed confirmation." From there, the trade goes into DTC's settlement process.

Other than the matching service, the BSTP application states that BSTP will not perform any other functions of a clearing agency requiring registration under Section 17A of the Exchange Act, such as net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market, or handling funds or securities.

B. SS&C

SS&C was incorporated in Delaware in 1996 and has headquarters in

Windsor, Connecticut, with offices in 20 locations across the United States and additional offices in Toronto, Canada, and other locations throughout the world. SS&C is a global provider of financial services-related solutions to investment management, banking, and other financial sector clients. All control and direction over SS&C is vested in SS&C Technologies Holdings, Inc. ("SS&C Holdings"), SS&C's parent company and a public holding company listed on NASDAQ (symbol SSNC).

The SS&C application states that all matching services would be performed by SS&C's subsidiary, SS&C Technologies Canada Corp. ("SS&C Canada"). The policies and operations of SS&C Canada are overseen by its officers and directors, and are subject to control by SS&C Holdings. SS&C Canada will perform the matching services in Mississauga, Canada, through its software-enabled service, SSCNet, which is a global trade network linking investment managers, broker-dealers, clearing agencies, custodians, and interested parties. Client support for these services will be rendered through SS&C's offices in the United States, the United Kingdom, and Australia. SS&C will coordinate support activity, which includes help desk facilities and call and issue tracking through a shared client call database, and relationship management. SS&C and SS&C Canada will maintain an intercompany agreement setting forth respective services and obligations.

In addition, the SS&C application makes the following representations regarding SS&C's operations: (i) SS&C shall obtain contractual commitments from its customers permitting it to provide information to the Ontario Securities Commission, the Commission, and other third parties; (ii) SS&C shall make available SS&C Canada employees in Canada or the United States for interview by the Commission subject to reasonable notice, provided that such action does not impose unreasonable hardship under applicable immigration law on such employees; (iii) as set forth in the intercompany agreement, SS&C shall provide the Commission access to information related to SS&C's matching system and ETC services, including those documents it receives from its service provider, SS&C Canada (the "business activities information"); (iv) SS&C Canada shall provide on the same business day to SS&C at its headquarters in Windsor, Connecticut electronically generated business activities information, in whatever form SS&C shall specify, including regularly and automatically generated and ad hoc

reports, books and records, correspondence, memoranda, papers, notices, accounts, and other such records; and (v) SS&C Canada shall send to SS&C at its headquarters in Windsor, Connecticut, all manually generated business activities information, in whatever form SS&C shall specify, no later than the business day on which the record is generated. Further, SS&C has confirmed with external counsel that implementation of the intercompany agreement would not violate the Canadian Personal Information Protection and Electronic Documents Act or the Ontario Business Records Protection Act.⁹ This would allow for the disclosure of personal information by SS&C Canada to SS&C.

Like the BSTP application, the SS&C application proposes to provide matching and ETC services for broker-dealers and institutional customers that will allow such entities to streamline communications and process allocation and post-trade information for fixed-income and equity trades for depository-eligible U.S. securities. According to the SS&C application, SS&C's matching service would allow institutional customers to route an order to a broker, receive an execution notice from the broker, and enter trade details and allocations so that SS&C's matching service can generate a matched confirmation and send an affirmed confirmation to the depository at DTC. SS&C's matching service will offer both block level matching and detail level matching. Standing settlement instructions are provided through the Delivery Instruction Database, which is fully integrated into SSCNet, and provides a repository for settlement instructions across asset classes, including foreign exchange and term deposits. SSCNet is also integrated into the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") Network, allowing users to communicate with parties outside the SSCNet platform. Users can select the output format for batch communications (SSCNet proprietary, SWIFT, ISITC, or DTC affirmation format), as well as when the batch should be submitted. Once a transaction is exported from SSCNet, central time stamping and a full audit trail are available for all transactions, with transaction histories maintained online for a minimum of 45

⁹ SS&C has stated that as the draft intercompany agreement is governed by Connecticut law, and as SS&C's external counsel are not qualified to practice in Connecticut, in providing these opinions they have assumed that the provisions of the intercompany agreement have the same meaning under Connecticut law as they would under Ontario and Canadian law.

days and accessible in an online archive for up to ten years.

Other than the matching service, the SS&C application states that SS&C will not perform any other functions of a clearing agency requiring registration under Section 17A of the Exchange Act, such as net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market, or handling funds or securities.

III. Discussion

A. Statutory Standards

1. Requirements for a National System for Clearance and Settlement

Section 17A of the Exchange Act directs the Commission to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) linked or coordinated facilities for clearance and settlement of securities transactions.¹⁰ In facilitating the establishment of the national clearance and settlement system, the Commission must have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.¹¹

2. Standard for Approval of an Application for an Exemption From Registration as a Clearing Agency

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission.¹² It also states that, upon the Commission's motion or upon a clearing agency's application, the Commission may conditionally or unconditionally exempt a clearing agency from any provision of Section 17A of the Exchange Act or the rules or regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities and funds.

In the Matching Release,¹³ the Commission concluded that an entity providing matching services as an intermediary between broker-dealers and institutional customers is a clearing agency within the meaning of Section

3(a)(23) of the Exchange Act,¹⁴ and therefore subject to the registration requirements of Section 17A of the Exchange Act.¹⁵ The Commission also noted that an entity that limited its clearing agency functions to providing matching services might not have to be subject to the full range of clearing agency regulation. In addition, the Commission stated that it anticipated an entity seeking an exemption from clearing agency registration for matching services would be required to (i) provide the Commission with information on its matching service and notice of material changes to its matching service; (ii) establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades; (iii) allow the Commission to inspect its facilities and records; and (iv) make periodic disclosures to the Commission regarding its operations.¹⁶ Accordingly, as noted in the Matching Release, a clearing agency whose clearing agency functions are limited to providing a matching service generally would be required to register as a clearing agency but could apply for an appropriate exemption.¹⁷

B. Comments Received and Commission Response

The Commission received thirty comment letters in response to the BSTP and SS&C notices from twenty-three commenters, including two comment letters from BSTP and one from SS&C.¹⁸ Although the Commission received only three comment letters on the SS&C application, the comments received in

response to both applications are discussed together below because the matching services proposed in each application are substantially similar and therefore raise many of the same issues regardless of which application a particular comment letter addresses. In addition, a majority of the comments submitted in response to the BSTP application address the question of whether there should be multiple providers of matching services, and those comments are therefore relevant to the Commission's consideration of both the BSTP and SS&C applications.

Commenters include individuals and firms representing buy-side and sell-side market participants, in both front and back-office capacities, with expertise in equities and fixed income, asset management, post-trade strategy, and operations. Four of the comment letters were submitted by the Depository Trust and Clearing Corporation ("DTCC"),¹⁹ which is the holding company for three clearing agencies registered with the Commission, including DTC (the central securities depository ("CSD") for the U.S. securities markets), as well as Omgeo, an exempt clearing agency that currently provides matching and ETC services for the U.S. equity markets (collectively "the DTCC complex").²⁰ Excluding BSTP and SS&C, eighteen commenters expressed explicit support for the BSTP application and three additional commenters submitted comments on the BSTP application expressing support for competition in the provision of matching services.²¹ One commenter expressed views that it

¹⁴ Section 3(a)(23) defines a "clearing agency" as, among other things:

[A]ny person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.

See 15 U.S.C. 78c(a)(23).

¹⁵ Specifically, the Commission concluded that matching services constitute comparison of data respecting the terms of settlement of securities transactions. See Matching Release, *supra* note 13, at 17943.

¹⁶ See *id.* at 17947 n.28. In addition, the Commission provided a temporary exemption from the clearing agency registration requirements to clearing agencies that provide (1) matching, (2) trade compression, (3) collateral management, and (4) other non-central counterparty clearance and settlement services for security-based swaps. See Exchange Act Release No. 34-64796 (July 1, 2011), 76 FR 39963 (July 7, 2011) (order pursuant to Section 36 of the Exchange Act granting temporary exemptions from clearing agency registration requirements under Section 17A(b) of the Exchange Act for entities providing certain clearing services for security-based swaps).

¹⁷ See Matching Release, *supra* note 13, at 17947.

¹⁸ See *supra* note 7.

¹⁹ The DTCC June letter also includes as an attachment an economic analysis of BSTP's application produced by Cornerstone Research. See DTCC June Letter at ex. I, available at <http://www.sec.gov/comments/600-33/60033-28.pdf> ("Cornerstone Report"). The Cornerstone Report augments many of the comments in the DTCC comment letters with several specific economic considerations that are related to those arguments. These comments and considerations are addressed throughout this order.

²⁰ The other two registered clearing agencies within the DTCC complex are (i) the National Securities Clearing Corporation ("NSCC"), which provides central counterparty ("CCP") services to its members for the clearing of transactions in a number of cash market products, including equity securities, bonds, and exchange-traded products, and (ii) the Fixed Income Clearing Corporation ("FICC"), which provides CCP services for transactions in U.S. government and certain mortgage-backed securities.

²¹ For commenters expressing explicit support for the BSTP application, see AllianceBernstein, Altieri, Anonymous, Capital Market Solutions, Connolly, Denci, Dore, Fidessa, James, Lang, Matthews, McCafferty, Northern Trust, Puskuldjian, Ransford, Scuteri, SIFMA AMF, and Traiana.

For commenters to the BSTP application expressing support more generally for competition in the provision of matching services, see Ambros, Durant, and Naratil.

¹⁰ See 15 U.S.C. 78q-1(a)(2)(A).

¹¹ See *id.*

¹² See 15 U.S.C. 78q-1(b)(1).

¹³ See Exchange Act Release No. 34-39829 (Apr. 6, 1998), 63 FR 17943 (Apr. 13, 1998) (providing interpretive guidance and requesting comment on the confirmation and affirmation of securities trades and matching) ("Matching Release").

would support additional providers of matching and ETC services if they met certain criteria.²² The remaining commenter, DTCC, endorsed the approach described in the Matching Release, stating that (i) a firm limiting its clearing agency activities to matching services should be eligible for an exemption from registration as a clearing agency and (ii) this is consistent with the goals of Section 17A of the Exchange Act, expressed general support for competition in the provision of matching services,²³ and raised several concerns with the BSTP and SS&C applications, as discussed below. In addition, in its letter, SS&C states that it is in complete agreement with BSTP on matters where DTCC's concerns are substantially the same between the BSTP and SS&C applications, such as DTCC's concerns raised regarding the question of how access to DTC for settlement of matched trades should proceed.²⁴ Similarly, DTCC states that it stands by its statements and positions in the DTCC June letter, submitted in response to the BSTP May letter, and incorporates those arguments by reference in response to the SS&C letter.²⁵

The discussion below first summarizes DTCC's proposed model for access to DTC submitted as part of its comments regarding the BSTP and SS&C applications. The discussion next provides an overview of comments organized by the particular subject matter raised across the respective comment files, and provides BSTP's and

SS&C's responses as well as the Commission's assessment and response within each subject matter section. The Commission notes here that many of DTCC's current arguments are inconsistent with prior representations it made when it sought for Omgeo—and Omgeo was granted, based on those representations—an exemption from registration to provide matching services. Those representations are discussed in detail below.

1. DTCC's Proposed Model for Access to DTC

In order to evaluate many of the particular issues raised by the commenters, the Commission first generally notes DTCC's proposal for structuring access to DTC, which is referenced throughout the Commission's consideration of comments below. According to DTCC, the optimal access model, referred to below as the "single access" model, would enable the industry to continue to rely on the existing systems (including certain systems currently located in Omgeo) to serve as the unique point of access to what DTCC describes as "the existing infrastructure," in particular DTC and the bank and broker-dealer custodians/settlement agents for the sending of matching confirmations and settlement instructions.²⁶ In other words, a single access model would require BSTP and SS&C to access this existing infrastructure uniquely through Omgeo and not via independent linkages to DTC.

DTCC believes that this approach would promote the safe and efficient clearance and settlement of securities transactions while permitting the securities industry to reap the benefits of the reliable, centralized infrastructure that has developed over the past forty years.²⁷ DTCC states that the single access model would permit BSTP and SS&C to avail themselves of Omgeo's extensive community of custodians and settlement agents without the costs and risks that would be incurred if each custodian and settlement agent had to create, operate, and maintain a separate interface and infrastructure with BSTP and SS&C.²⁸ DTCC also notes that this would provide a more rapid, less expensive option for BSTP and SS&C to begin providing matching services.²⁹ DTCC states that the single access model furthers the purposes of Section 17A of the Exchange Act, citing previous

Commission statements that (i) a clearing agency entering into an interface with another clearing agency has an interest in assuring itself that the participant clearing agency will be able to meet its obligations, and that (ii) clearing agencies may require reasonable assurances of another clearing agency's ability to meet its obligations, provided such requirement does not impose an inappropriate burden on competition.³⁰

The Commission evaluates the merits of the BSTP and SS&C applications on their own terms under the statutory standard described above. The Commission is not opining on the general issue of whether a multiple access model is always preferable to a single access model.

2. Efficiency

Under Section 17A of the Exchange Act, Congress directs the Commission to facilitate a prompt system for clearing and settling transactions, and the Congressional findings in Section 17A state that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions.

The Commission received multiple comments addressing whether the expected effect of the BSTP and SS&C applications would result in various inefficiencies, with a particular focus on the possibility of unnecessary costs and processing inefficiencies. BSTP states in its comment letter that the BSTP application promotes processing efficiencies by proposing to bring automation to some segments of the marketplace that today use manual procedures and by enabling straight-through processing throughout the entire trade lifecycle, which BSTP states will contribute to increases in same-day affirmation rates and increases in settlement rates.³¹ Similarly, SS&C states in its comment letter that the SS&C application promotes processing efficiencies by streamlining the post-trade communication flow between institutional customers, broker-dealers, custodians, and interested parties, providing for real-time communications and matching services that highlight trade discrepancies early in the trade lifecycle, which SS&C states will lead to timely affirmations and a reduction in failed deliveries.³² In addition, nine commenters identified increases in efficiency in the confirmation/affirmation process itself as an

²² See Citi; see also *infra* note 137 and accompanying text (discussing the specific criteria set forth by the commenter).

²³ See DTCC April letter at 1–2 (endorsing the approach described in the Matching Release); DTCC September Letter at 2; DTCC June letter at 2–3; DTCC May letter at 2–3; DTCC April letter at 2, 12–14 (each stating that competition in service offerings may permit useful innovation and product alternatives, to the benefit of industry participants and ultimately to investors, and proposing a method of facilitating access to DTC through Omgeo for BSTP and SS&C).

²⁴ See SS&C letter at 4. Accordingly, as to DTCC's comments, the Commission understands that SS&C would be in agreement with BSTP as to concerns about access to DTC and the related discussions of efficiency; competition; choice, and innovation; systemic risk; operational risk; and interoperability with Omgeo. Concerns raised about BSTP's governance arrangements and BSTP's request for relief under Rule 10b–10 would be specific to BSTP. Concerns raised about the cross-border aspects of the SS&C application would be specific to SS&C.

²⁵ See DTCC September letter at 2 n.5. In considering and addressing DTCC's comments, the Commission has considered each application with respect to all of DTCC's comments except where DTCC's comments were addressed specifically to BSTP's governance arrangements, BSTP's request for relief under Rule 10b–10, and the cross-border aspects of the SS&C application, as noted previously above. See *supra* note 24.

²⁶ See DTCC September letter at 2; DTCC June letter at 2–3; DTCC May letter at 2; DTCC April letter at 3.

²⁷ See *id.*

²⁸ See DTCC April letter at 12–13.

²⁹ See *id.*

³⁰ See DTCC September letter at 2; DTCC May letter at 8–9.

³¹ See BSTP May letter at 3.

³² See SS&C letter at 2.

anticipated benefit of having multiple matching service providers.³³

However, DTCC raises multiple concerns, summarized below, about the effect of the applications on the efficiency (both in terms of unnecessary costs and processing inefficiencies) of the settlement system for U.S. equities. The Commission understands that DTCC is primarily concerned with the following matters: (i) whether it is efficient for BSTP and SS&C to have direct access (rather than mediated access) to DTC for submission of delivery orders; (ii) whether new matching service providers might negatively affect current trade confirmation/affirmation rates; (iii) how control numbers for trades can be managed efficiently in a marketplace with multiple matching service providers; and (iv) whether the costs that DTCC and market participants might incur to incorporate new matching service providers into the market infrastructure can be supported by the anticipated benefits. The Commission evaluates each of these concerns in turn.

i. Access to DTC

With respect to the access model proposed by each of the BSTP and SS&C applications, DTCC states that allowing both BSTP and SS&C to access DTC directly under a “multiple access” model would impose additional costs on the industry, including the cost of building access to DTC for each applicant and the related cost of building parallel access to custodians and settlement agents.³⁴ In addition, DTCC also states that developing a post-trade processing system, including a settlement instructions database, that is completely independent of Omgeo (including the Omgeo ALERT database that centrally maintains account information and standing settlement instructions to enrich allocation messages for settlement at DTC) would raise interface costs for industry participants and increase the technological complexity of the infrastructure for the national clearance and settlement system.³⁵ DTCC also notes that failed trades are currently resolved and reconciled through Omgeo, not DTC.³⁶ As an alternative to a multiple access model, DTCC proposed

a single access model, summarized above in Part III.B.1.

DTCC’s current arguments supporting a single access model that runs through Omgeo cannot be reconciled with DTCC’s own prior representations surrounding the formation of the joint venture between DTCC and Thomson Financial (Global Joint Venture or “GJV,” later renamed Omgeo), which was granted an exemption from registration to provide matching services in the Omgeo order.³⁷ The Commission finds that DTCC must continue to abide by prior representations it made that led the Commission to approve the Omgeo order.

For purposes of background, as a condition precedent to the GJV’s formation, DTC submitted a proposed rule change to transfer DTC’s existing ETC and matching engine to Omgeo as its contribution to the GJV.³⁸ The Commission received thirty-six comment letters in response to both the DTC 00–10 proposal and the notice that preceded the Omgeo order, seventeen of which requested that the Commission take steps to safeguard interoperability and competition among service providers in order to prevent any entity from gaining an unfair monopoly.³⁹

The Commission believes that providing a summary of key comments on the DTC 00–10 proposal is helpful in explaining the Commission’s assessment of DTCC’s objections to the BSTP and SS&C applications because the past comments raise many of the same issues raised in the comments to this order. One of the commenters cited

³⁷ See Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, Exchange Act Release No. 34–44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2001) (“Omgeo order”).

³⁸ See Exchange Act Release No. 34–43541 (Nov. 9, 2000), 65 FR 69591 (Nov. 17, 2000) (notice of filing by DTC of a proposed rule change relating to the combination of the DTC’s TradeSuite institutional trade processing services with Thomson-Financial ESG’s institutional trade processing services) (“DTC 00–10 proposal”); see also Exchange Act Release No. 34–44189 (Apr. 17, 2001), 66 FR 20502 (Apr. 23, 2001) (Commission order approving DTC’s proposed rule change relating to the combination of DTC’s TradeSuite institutional trade processing services with Thomson-Financial ESG’s institutional trade processing services) (“DTC 00–10 approval order”).

In the above proposed rule change, the transfer involved TradeMessage (automated exchange of messages such as block trade notices of execution, allocation instructions, trade confirmations, and affirmations), TradeMatch (electronic comparison of investment manager allocations with broker-dealer trade confirmations), TradeSettle (supplier of account and settlement data using DTC’s Standing Instructions Database, and router of settlement instructions to custodian banks and clearing agents), and TradeHub (router of messages).

³⁹ See Omgeo order, *supra* note 37, at 20504.

by the Commission in the DTC 00–10 approval order, TradingLinx, focused its concern on the transfer of TradeMessage and TradeSettle,⁴⁰ which was notable given that the Commission was primarily focused on the transfer of the matching service functionality. The TradingLinx letter pointed out that, at the time, all vendors had free, open access to the data contained in DTC’s Standing Instructions Database (“SID”), which houses settlement instructions for the industry. TradingLinx worried that transferring SID to a for-profit entity might change the cost or level of access to SID data. DTCC submitted a comment in response, stating that TradingLinx’s concerns were misplaced because (i) vendors acting on behalf of DTC participants will be able to transmit settlement instructions directly to DTC without the involvement of GJV; (ii) vendors acting on behalf of customers of the DTC TradeSuite family of services have access to SID; (iii) those vendors can enter data in and receive data from SID on behalf of broker-dealers, investment managers, and custodians who are common customers of the vendors and DTC; and (iv) the staffs of DTCC and GJV have determined that the same open access by customers’ vendors to SID will continue with respect to the unified database after GJV commences operations.⁴¹

Another commenter on the DTC 00–10 proposal, GSTP AG, expressed concerns that combining elements of DTC with a commercial entity could result in denial of access to DTC for matching service competitors, and/or pricing for access to DTC settlement and depository services that might preference GJV over matching service competitors.⁴² DTCC responded by reiterating the assurances it made in its response to TradingLinx, stating that GJV will at the option of its customers either enter settlement instructions on their behalf into the DTC settlement system (or any other settlement system with which the GJV interfaces) or make the settlement instructions available to the customers or their vendors so that the customers or vendors can enter the instructions into a settlement system.⁴³

⁴⁰ See letter from Justin Lowe, Chief Executive Officer, and Robert Raich, Chief Financial Officer, TLX Trading Network (Dec. 18, 2000), available at <http://www.sec.gov/rules/sro/60032/60032-13.pdf>.

⁴¹ See letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (Jan. 4, 2001), available at <http://www.sec.gov/rules/sro/60032/60032-18.pdf>.

⁴² See letter from Burkhard H. Gutzeit, Chairman, and G. Steven Crosby, Acting Chief Executive Officer, GSTP AG (Jan. 3, 2001), available at <http://www.sec.gov/rules/sro/60032/60032-16.pdf>.

⁴³ See letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (Jan. 12, 2001),

³³ See AllianceBernstein at 1; Altieri; Capital Market Solutions; Connolly; James; Lang; Northern Trust; SIFMA AMF at 2; Traiana.

³⁴ See DTCC April letter at 11; Cornerstone Report at 6, 23.

³⁵ See *id.* at 17–19. The Commission notes that DTCC’s concerns about the costs of building linkages are addressed in Part III.B.2.iv below.

³⁶ See *id.* at 14 n.43.

GSTP AG then responded with requests (also cited by the Commission in the Omgeo order) that, before these issues can be resolved, it be clearly understood which functions will continue to be performed exclusively by DTC and which will be performed by the GJV, noting that (i) DTC offers through TradeSuite a service to all U.S. settlement agents who have an account with DTC for settlement whereby the trades confirmed and/or affirmed are relayed to the settlement agent involved in the trade; (ii) this feature of the service is an integral part of the clearance and settlement process as it is used by all settlement agents to update their records and by the DTC to proceed with the settlement; and (iii) fair and open access to DTC settlement functions for all matching services must encompass a requirement that DTC, and not the GJV, continue to provide this service.⁴⁴

DTCC's subsequent response indicated that DTC would limit its activities to following the settlement instructions authorized by its participants, whether those instructions were submitted by GJV or GSTP AG.⁴⁵ The Commission ultimately approved the DTC-00-10 proposal after DTC submitted an amendment to the rule filing stating that DTC shall not favor any single provider of matching services, including GJV, over any other matching services in terms of the quality and caliber of the interface to DTC's clearing agency or settlement functions, quality of connectivity, receipt of delivery and payment orders, speed or processing delivery and payment orders, capacity provided, or priority assigned in processing delivery and payment orders.⁴⁶

Subsequent to approval of the Omgeo order, DTC also submitted proposed rule change SR-DTC-2001-11, proposing to authorize DTC to accept and act upon instructions provided by a central matching provider other than Omgeo. The Commission's approval order discussed two significant factors relevant to DTCC's comments regarding access to DTC.⁴⁷ First, the approval

order noted that DTC neither engaged in matching institutional trade information nor communicated to its participants or others prior to settlement that a transaction has been matched.⁴⁸ Pursuant to the order, then, DTC and Omgeo had clear and distinct functions: Omgeo was to provide matching services and DTC was to facilitate settlement. Second, the approval order noted that (i) DTC assumed a matching service provider would make arrangements for the communication of trade information to the DTC participants expected to settle a matching transaction by book-entry delivery at DTC, and (ii) DTC was prepared to accept from a matching service provider a file of deliver order instructions to settle transactions between DTC participants that had authorized it to accept such instructions from the matching service provider.⁴⁹

In approving the proposed rule change, the Commission stated its belief that the DTC rule change was consistent with the Exchange Act because it would allow DTC to act upon deliver order instructions received from a matching service provider.⁵⁰ The Commission observes that this is precisely the arrangement now contemplated by the BSTP and SS&C applications—one where BSTP and SS&C, as matching service providers, can communicate settlement instructions to DTC without Omgeo as an intermediary. Given the series of representations made by DTCC in support of approving the DTC rule changes that facilitated the creation of Omgeo and approval of the Omgeo order itself, the Commission views DTCC's current suggestion that the Commission now require a single access model for new matching service providers to be inconsistent with DTCC's prior representations.

Even apart from DTCC's prior inconsistent representations, the Commission is also unpersuaded that the prospect of incurred costs merits denial or modification of the applications insofar as they propose a multiple access model. Matching service providers cannot settle transactions since they necessarily require access to the central securities depository for the United States, and as such access to the central securities depository is distinct from access to other post-trade processes (such as providing a standing

upon instructions provided by a central matching service provider).

⁴⁸ See *id.* at 51987.

⁴⁹ See *id.* at 51987–88.

⁵⁰ See *id.* at 51988.

instructions database).⁵¹ The Commission further believes that multiple points of access to DTC have value with respect to redundancy (discussed further below). The Commission also finds that DTCC's objections to costs generated by multiple points of access—which the Cornerstone Report did not estimate—are speculative.⁵² Moreover, these types of costs should not be unexpected in light of the Omgeo order, as described in more detail below. Further, if the Commission were to require each matching service provider to access DTC through Omgeo, such dependency could allow Omgeo to impose surcharges or other costs on its competitors that are not imposed on Omgeo itself, which the Commission believes could lead to unnecessary costs. Even if no fees were imposed, the structure could also limit innovation in the provision of matching services by other matching service providers. BSTP and SS&C also cautioned against such an outcome. BSTP describes in its comment letter that any new matching service provider required to rely on Omgeo would find itself in the untenable position of being dependent on a competitor's infrastructure, cooperation, and fee structure to operate its business and would likely find that such circumstances create an insurmountable barrier to entry.⁵³ Similarly, SS&C infers from DTCC's position that Omgeo would impose the same charges on competing matching services as they do on clients today and states that, should the Commission accept this position, SS&C doubts that any service would find it economically viable to enter the market for post-trade services to compete with Omgeo.⁵⁴

The Commission notes that the BSTP and SS&C applications did not specify whether BSTP or SS&C planned to develop their own duplicate standing instructions database. In cases where BSTP and SS&C can choose whether to depend on an existing system or develop their own, the Commission expects that market forces will determine whether utilizing existing services or systems will be dictated by an assessment of the business costs and benefits related to such choices. The Commission believes that such decisions are not predetermined.

⁵¹ As noted above, SS&C has its own Delivery Instruction Database. See *supra* Part II.B (describing SS&C's proposed service).

⁵² See, e.g., Cornerstone Report at 30 (stating that there are aspects of central matching services that may be best provided by a single provider).

⁵³ See BSTP August letter at 4.

⁵⁴ See SS&C letter at 3.

available at <http://www.sec.gov/rules/sro/60032/60032-24.pdf>.

⁴⁴ See letter from Burkhard H. Gutzeit, Chairman, and G. Steven Crosby, Acting Chief Executive Officer, GSTP AG (Jan. 30, 2001), available at <http://www.sec.gov/rules/sro/60032/60032-33.pdf>.

⁴⁵ See letter from Richard B. Nesson, Managing Director and General Counsel, DTCC (Mar. 9, 2001), available at <http://www.sec.gov/rules/sro/60032/60032-38.pdf>.

⁴⁶ See DTC 00-10 approval, *supra* note 38, at 20505.

⁴⁷ See Exchange Act Release No. 34-44905 (Oct. 4, 2001), 66 FR 51987 (Oct. 11, 2001) (order approving DTC rule change authorizing DTC to act

Finally, the Commission notes that DTCC has adopted a multiple access model for trade data submitted to one of its other registered clearing agencies, NSCC. Currently, NSCC receives trade data directly from exchanges, qualified special representatives, correspondent clearing agencies, and Omgeo.⁵⁵ Because trade information is coming from separate market participants directly into NSCC, the Commission believes that this example further suggests that a DTCC registered clearing agency can receive data directly from Omgeo and multiple other entities in an effective and efficient manner that is consistent with the Exchange Act.⁵⁶

ii. Effect on Trade Confirmation/Affirmation Rates and Industry Efforts To Shorten the Settlement Cycle

DTCC states that the multiple access model contemplated by the BSTP and SS&C applications may decrease the promptness of the current matching services infrastructure by increasing the time necessary to route confirmations and affirmations between customers and service providers.⁵⁷ In the Cornerstone Report, DTCC cites research suggesting that certain components of the market's infrastructure, which may include the national system for clearance and settlement, have characteristics where the optimal structure is to provide clearing and settlement services via a single, regulated entity rather than multiple competing firms.⁵⁸ DTCC

states that broker-dealers using multiple matching services would be required to either modify existing systems to account for multiple matching service providers or invest in multiple systems, one for each such matching service provider, to obtain trade confirmations and transmit settlement instructions.⁵⁹ DTCC also states that this duplication in systems would likely lead to additional costs and risks of error to the detriment of industry participants and their customers, who may face additional burdens to make timely deliveries, impairing their ability to comply with Rule 10b-10 and Regulation SHO.⁶⁰ Further, DTCC states that BSTP's entry may induce participants to move from Omgeo's to a less efficient sequential model, which according to data from Omgeo yields significantly lower affirmation rates in the majority of DTC eligible transactions.⁶¹ DTCC states that the combined effect of these potential consequences could also impair industry efforts to shorten the settlement cycle.⁶²

After carefully considering these comments, the Commission believes that, on balance, approval of the BSTP and SS&C applications is more likely to promote rather than impair promptness in the market for matching services, particularly with respect to the effect on confirmation/affirmation rates and industry efforts to shorten the settlement cycle. First, the Commission acknowledges that obtaining access to new matching service providers may require market participants to modify existing systems or purchase new

systems to facilitate access to those matching service providers. But the Commission notes that these costs would be borne only by market participants presented with new products or services that they anticipate will offer benefits not available via the existing market infrastructure or via existing matching service providers that justify bearing these costs. DTCC's concern that these systems may be duplicative ignores that duplicative services may carry benefits that market participants seek, such as providing a new access point to DTC, a new interface with features not provided by Omgeo, or access to new markets or market participants not accessible through Omgeo.

BSTP states that its matching service will receive trade execution information in real time, thereby enabling users to immediately identify and address processing exceptions on the trade date. BSTP states that it will provide a variety of efficiency tools that it believes are not currently offered to market participants to help them manage settlement exceptions, including tools for exception monitoring and instant chat functionality.⁶³ The Commission believes that streamlining the confirmation/affirmation function helps facilitate prompt settlement because, as the use of manual processes for entry of information decreases, the opportunity to improve same-day (*i.e.*, prompt) affirmation rates for U.S. equities increases. The Commission also believes that the tools BSTP intends to offer will increase the ability of market participants and their custodians to manage settlement exceptions.

Second, the Commission does not find DTCC's argument that matching services fall among those components of the market's infrastructure having characteristics where the optimal structure is to provide them via a single entity rather than multiple competing firms to be so compelling as to justify denial or modification of the applications. DTCC comments, including comments in the Cornerstone Report, fail to establish or otherwise substantiate in any specific detail how the fixed costs of operating a matching service are so high as to generate inefficiencies if borne by more than one provider.⁶⁴ As BSTP notes in its

⁵⁵ See generally NSCC & Industry Working Group, Trade Clearance Input Concept Paper (August 2014), available at <http://www.dtcc.com/news/2014/september/16/dtcc-publishes-concept-paper-on-trade-clearance-input> (discussing NSCC's system for capturing trades).

⁵⁶ The history of ETC services reflects a similar multiple access approach. To facilitate settlement in a registered securities depository following use of an ETC service, DTC coordinated with the Midwest Securities Trust Company ("MSTC") and the Philadelphia Depository Trust Company ("Philadep") to ensure that DTC participants on one side and sole participants in either MSTC or Philadep on the other side could collectively achieve ETC by linking DTC's automated settlement system for institutional transactions with similar systems developed in coordination with MSTC and Philadep. See Exchange Act Release No. 34-19227 (Nov. 9, 1982), 47 FR 51658, 51659-60 (Nov. 16, 1982). The Commission noted that these linked systems facilitated communications without regard to the parties' choice of depository, thereby promoting uniformity in clearance and settlement procedures. The Commission also noted at the time that the linkages should reduce unnecessary costs associated with settlement, such as from delayed or lost affirmation and settlement instructions. See *id.* at 51660-61.

⁵⁷ See DTCC April letter at 13.

⁵⁸ See Cornerstone Report at 4, 20-21 (describing the roles that economies of scale and network effects play in the provision of clearing services). DTCC also notes, for example, that there appears to be little dispute that the core depository services currently provided by DTC are more efficiently

provided by a single depository than by multiple competing depositories. See *id.* at 4.

⁵⁹ See *id.* at 19; DTCC April letter at 8. This section focuses specifically on aspects of this concern related to efficiency, such as the potential need for broker-dealers to obtain trade confirmations and transmit settlement instructions using multiple systems. The costs of establishing linkages are addressed below in Part III.B.2.iv. The potential for an increase in systemic or operational risk are addressed, respectively, in Parts III.B.4 and III.B.5.

⁶⁰ See Cornerstone Report at 7; DTCC April letter at 8 (noting that maintaining multiple systems for compliance with Rule 10b-10 would require not only referencing two sources for providing trade instructions but also two sources for receiving, downloading, and maintaining such trade confirmations under the applicable recordkeeping rules, resulting in unnecessary duplication, additional costs, and an increased risk of errors).

BSTP requested that the Commission clarify the need for a matching service provider to obtain no-action relief under Rule 10b-10 in order to provide ETC and matching services. The Commission notes that BSTP has obtained such no-action relief from the Division of Trading and Markets. In addition, the Commission notes that SS&C obtained no-action relief from the Division of Trading and Markets in 2008.

⁶¹ See Cornerstone Report at 6.

⁶² See DTCC April letter at 16.

⁶³ See BSTP application at S-3, S-5; see also BSTP May letter at 8.

⁶⁴ The Cornerstone Report states that interoperability is the key to competition in central matching services and notes that there are conditions in the respective orders that are designed to facilitate interoperability. The Cornerstone Report concludes that there are significant complexities associated with pricing in

comment letter, the Cornerstone Report concedes that the research supporting this argument concerns providers of CSD and CCP services, not confirmation/affirmation platforms or matching services.⁶⁵ The Commission believes that this difference in clearing agency activity is significant and notes that the characteristics of a matching service provider are distinct from those of a clearing agency providing CSD or CCP services. The Commission's treatment of the different entities within the DTCC complex helps to illustrate this point. For instance, clearing agencies that provide CSD and CCP services, such as DTC and NSCC, are registered with the Commission, act as SROs under Section 19 of the Exchange Act, submit rule filings for Commission review and approval, and remain subject to the full set of requirements applicable to clearing agencies under Section 17A of the Exchange Act, as well as the rules and regulations thereunder. Matching service providers like Omgeo are, in contrast, exempt clearing agencies that the Commission has authorized to provide certain services, subject to specific conditions as set forth in an exemptive order. The different approaches reflect the Commission's view that different types of clearing entities have different operating structures with different attributes that reflect different regulatory goals and objectives. The Commission believes that differences stemming from the types of clearing entity or service provided in this case support allowing multiple entities to act as matching service providers, and may lead to increases in efficiency in the market for matching services.⁶⁶

DTCC also suggests that access to multiple matching service providers may increase the time necessary to route confirmations and affirmations between customers and service providers, which may interfere with market participants' ability to satisfy their obligations under Regulation SHO. DTCC also states that duplication of systems may result in multiple providers of Rule 10b-10 confirmations, resulting in unnecessary duplicate systems, additional costs, and

an interoperating central matching services marketplace, and that more careful analysis is needed to ensure that these complexities are resolved in a manner consistent with the Commission's mandate. *See* Cornerstone Report at 26-29.

⁶⁵ *See* BSTP August letter at 1 (citing Cornerstone Report at n.58).

⁶⁶ The Commission believes that these gains in efficiency may stem from increased competition and innovation in the market for matching services, as discussed below in Part III.B.3.

an increased risk of errors.⁶⁷ The Commission also finds these arguments too speculative. First, as BSTP notes in its comment letter, the Cornerstone Report identifies a particular scenario whereby delays in the affirmation or matching process in connection with a long sale of securities occurs at NSCC and leads to delivery failures, which could occur within the existing market structure and is not specifically caused by the existence of multiple matching service providers.⁶⁸ The Commission agrees that this example is not unique to an environment with multiple matching service providers and therefore finds the Cornerstone Report's assertions highly speculative. Second, the operational and interoperability conditions included in the Omgeo order are designed to limit communication errors or other delays by setting conditions with respect to interoperability among multiple matching service providers.⁶⁹ Regulation SCI,⁷⁰ which also applies to exempt clearing agencies subject to ARP,⁷¹ further seeks to establish standards for connectivity, reliability, and resiliency to minimize the types of disruptions contemplated by DTCC. Third, the Commission notes that the examples of potential Regulation SHO violations presented in the Cornerstone Report, similar to the Rule 10b-10 comments discussed above, are speculative and more fundamentally unrelated to the concerns about efficiency raised by DTCC because, as BSTP also notes, the absence or presence of multiple confirmation service providers was not material or even relevant to the violations in question.⁷² The Commission therefore believes that these DTCC comments are too speculative and attenuated to be persuasive.

⁶⁷ *See supra* notes 59-60 and accompanying text. The Commission notes that it has addressed comments expressing concerns about duplicate systems above. In addition, the costs of establishing linkages are addressed below in Part III.B.2.iv. The potential for increases in systemic or operational risk are addressed, respectively, in Parts III.B.4 and III.B.5.

⁶⁸ *See* BSTP August letter at 5.

⁶⁹ These conditions are also included below for BSTP and SS&C. *See infra* Part IV.A.2.ii (for BSTP) and Part IV.B.2.ii (for SS&C).

⁷⁰ *See* Exchange Act Release No. 34-73639 (Nov. 19, 2014), 79 FR 72251 (Dec. 5, 2014).

⁷¹ Application of Regulation SCI to exempt clearing agencies is discussed in Part III.B.8.

⁷² Specifically, as BSTP describes, one involved violations that persisted over four years and the other involved allegations of knowingly and willfully ignoring requirements. *See* BSTP August letter at 5 & n.19. The Commission notes that neither has circumstances implicating either the presence of multiple service providers or the linkages between them.

In response to DTCC, BSTP counters that Omgeo actually impedes the move to a shortened settlement cycle by reducing the incentives for new providers to enter the market and thereby attract market participants to use matching services. BSTP states that it intends to service, among others, investment managers, brokers, and custodians that currently rely on manual processes for post-trade matching of trade and allocation information. In particular, BSTP states that it will enable such investment managers to gain the benefits of an electronic matching service while continuing to use their existing workflows (fax, email, PDF, etc.) to send allocation instructions to their executing brokers, an important segment of market participants necessary to shorten the settlement cycle.⁷³ In contrast to the concerns raised by DTCC, BSTP states that transmission of matched settlement data without a direct electronic link to DTC would introduce a layer of inefficiency and complexity that would impair efforts to move to a shortened settlement cycle.⁷⁴ Consistent with BSTP's position, five other commenters also expressed the view that increasing the number of matching service providers, by increasing efficiency, would likely also facilitate moving to a shortened settlement cycle.⁷⁵ The Commission does not believe that expanding the scope of market participants engaged in matching services will impede industry efforts to shorten the settlement cycle because, in this situation, the availability of multiple matching service providers will provide market participants with more venues to match their trades in a timely, efficient manner, thereby increasing the potential for a higher global rate of affirmed trades within the current settlement cycle.⁷⁶

iii. Management of Control Numbers

Related to DTCC's concerns regarding efficient access to DTC, DTCC also raises concerns about how, under a multiple access model, control numbers

⁷³ *See* BSTP May letter at 8. BSTP also notes that increased resiliency is necessary to move to a shortened settlement cycle. *See id.* Comments related to resiliency (*i.e.*, operational risk) are addressed in Part III.B.5.

⁷⁴ *See* BSTP August letter at 4. Comments regarding access to DTC were addressed above in Part III.B.2.i.

⁷⁵ *See* AllianceBernstein at 1; Capital Market Solutions; Puskuldjian; SIFMA AMF at 1; Traiana.

⁷⁶ *See* Exchange Act Release No. 34-49405 (Mar. 11, 2004), 69 FR 12922, 12926 (Mar. 18, 2004) (noting that it is generally accepted that a substantial portion of the risks in a clearance and settlement system is directly related to the length of time it takes for trades to settle and that, in other words, time equals risk).

used to identify trades throughout the trade lifecycle would be assigned. First, DTCC explains that DTCC TradeSuite ID, which is part of Omgeo, provides control numbers to market participants upon receiving the trade data input from the executing broker-dealer.⁷⁷ DTCC states that issuing control numbers from DTC, rather than TradeSuite ID, would require substantial system changes, either through building a new system within DTC or transferring the TradeSuite ID control number issuance capability to DTC.⁷⁸ Second, DTCC notes that there are potential benefits to centralizing this data. For example, DTCC states that centralization of time-stamped trade records at DTCC has permitted the settlement agents and DTC to more efficiently and effectively settle trades that failed to settle on the scheduled settlement date, while allowing market participants to reconstruct trades and even unwind them when appropriate.⁷⁹

The Commission agrees that there are potential benefits to centralizing trade data in a single repository. Indeed, BSTP states that the creation of the control number, the transmission of the control number to the parties involved in settlement, and the transmission of settlement instructions to DTC are critical components of post-trade processing, and, as such, are elements of the national clearance and settlement system that ought to be provided on a fair and non-discriminatory basis by DTC.⁸⁰ BSTP further notes, however, that even if the Commission were to continue to allow DTC to outsource issuance of control numbers to Omgeo, DTC could simply allow BSTP to generate its own control numbers on DTC's behalf. BSTP states that, whatever the approach, it is capable of enriching a confirmation with a control number, thereby providing the same benefit of efficiently and effectively settling trades, as provided by the existing infrastructure.⁸¹

DTC rule change SR-DTC-2001-11 was approved to allow DTC to accept and act upon instructions provided by a matching service provider, and if centralization of trade data is necessary for such settlement, DTC has

undertaken, in its capacity as a registered clearing agency and SRO, to perform such services.⁸² Further, centralization of trade data remains possible under a multiple access model supported by consistent data standards and identifiers. In this regard, BSTP notes that DTC could ensure that control numbers generated by BSTP are distinguishable from those generated by Omgeo by requiring, for example, use of a "B" prefix for the former and an "O" prefix for the latter.⁸³

iv. Costs of Linkages

DTCC states that both the DTCC complex and market participants would face increased costs if the multiple access model contemplated by the BSTP and SS&C applications were implemented, and that the risks and costs of building and testing these connections would multiply exponentially as additional matching service providers enter the market.⁸⁴ DTCC states that the Commission should therefore allow the industry to avail itself of the systems and controls that have already been established through Omgeo, an industry-owned utility.⁸⁵ First, DTCC states that DTC would have to develop, build, and maintain new systems to interoperate with BSTP and SS&C. DTCC states that it would have to modify its internal systems and network management infrastructure and build in capabilities to prepare for the possibility of additional central matching services with direct access to DTC, and that BSTP and SS&C would also incur substantial costs.⁸⁶ DTCC states that, as DTC's systems become more complex, DTC's maintenance requirements would also become more complex and costly, costs which would be borne by industry participants and ultimately investors. According to DTCC, these additional costs would also require DTC to reprioritize other critical projects, thereby potentially delaying important industry initiatives intended to make the national clearance and settlement system more secure and efficient.⁸⁷

Second, DTCC states that market participants involved in the settlement of trades matched by BSTP and SS&C would need to develop, build, and maintain new interfaces and reengineer internal systems to receive and process messages from BSTP and SS&C. DTCC also states that market participants would inevitably bear at least some of the costs incurred by DTC, BSTP, and SS&C, as those costs are passed on to investors.⁸⁸

With respect to the implementation of new network designs and interfaces, and the provision of access, the Commission is unpersuaded that the prospect of additional expenses merits denial or modification of the applications. The Commission acknowledges that the entry of BSTP and SS&C into the market for matching services may initially result in additional investments by BSTP, SS&C, Omgeo, and DTC, as well as potentially a number of other market participants who rely upon such entities in various capacities. Neither DTCC nor any of those entities quantified the associated costs, however. The Commission expects that, as for-profit entities, neither BSTP nor SS&C would choose to bear these costs, including costs passed through from DTC, unless either believed it could do so profitably. While there may be initial costs required to establish new linkages, these new linkages will introduce competition and choice into the market for matching services, providing new opportunities for innovation that may reduce costs to market participants in the long run, as discussed further below. Indeed, there was unanimity in the comments by market participants about the impact on costs passed down to them: twenty-three market participants or industry groups commented on the BSTP application and expressed no concerns about costs being passed on to them. Rather, as noted previously, many of the commenters stated the opposite—that the introduction of new matching service providers would reduce costs to industry.⁸⁹

With respect to implementation difficulties, the Commission is unpersuaded that the prospect of expenditures merits denial or modification of the applications. As previously discussed, both Omgeo and DTC agreed to a number of conditions that anticipated, and were designed to facilitate, the possibility of new matching service providers.⁹⁰ The

⁷⁷ See DTCC April letter at 15.

⁷⁸ See *id.*; see also Cornerstone Report at 19–22. The Commission notes, however, that, in its comments regarding the timeframes for building and operating interfaces, DTCC identifies assignment of control numbers as one of the functionalities it will need to develop with BSTP and SS&C to ensure interoperability consistent with the conditions of the Omgeo order. See *infra* Part III.B.7.ii.

⁷⁹ See DTCC April letter at 7.

⁸⁰ See BSTP May letter at 14.

⁸¹ See *id.*

⁸² See *supra* Part III.B.2.i.

⁸³ See BSTP May letter at 14 n.41.

⁸⁴ See DTCC April letter at 11.

⁸⁵ See DTCC April letter at 11; Cornerstone Report at 18–19.

⁸⁶ Specifically, DTCC states that BSTP and SS&C would be required to (i) implement a redundant fault tolerant network design, including interfaces that ensure robust security protocols and processes based on DTCC standards, and (ii) build access to the custodian/settlement agent community to implement the multiple access model, imposing significant time, cost and other resources on BSTP, SS&C, and the custodians/settlement agents, costs that DTCC states would inevitably be passed on to investors. See DTCC April letter at 11.

⁸⁷ See *id.* at 12.

⁸⁸ See *id.* at 11; Cornerstone Report at 24.

⁸⁹ See, e.g., *infra* note 94 and accompanying text regarding reduced costs.

⁹⁰ See *supra* notes 37–50 and accompanying text.

Commission notes that neither DTCC nor the Cornerstone Report provided concrete descriptions of which critical projects would be delayed, or for how long. Further, as a registered clearing agency, DTC has obligations under Section 17A(b)(3)(F) of the Exchange Act to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, which it cannot abrogate due to cost. To the extent that DTCC reprioritizes projects, entities within the DTCC complex registered pursuant to Section 17A of the Exchange Act must continue to meet their legal and regulatory obligations.

3. Competition, Choice, and Innovation

Section 17A of the Exchange Act directs the Commission, in facilitating the establishment of the national clearance and settlement system, to have due regard for, among other things, maintenance of fair competition among clearing agencies.⁹¹ Below is an overview of comments related to competition. The Commission also received comments about choice and innovation, which are discussed below.

One commenter states explicitly that approving the BSTP application would be consistent with the objectives of Section 17A of the Exchange Act and investor protection by promoting the integrity of the financial markets.⁹² DTCC, however, states that it is unclear whether the national clearance and settlement system can effectively sustain competition among multiple matching services and that the outcome of such competition may be that a for-profit entity becomes the primary provider of matching services. DTCC questions whether a for-profit entity like BSTP or SS&C can ensure that pricing decisions will be undertaken in a way that benefits the long-term best interest of the industry.⁹³

There was unanimous support for new entrants to provide matching services. Several commenters anticipated that additional providers of matching services would yield benefits, namely increases in competition, choice, and innovation within the market for matching services.⁹⁴ Twelve commenters identified as a related benefit a reduction in costs to market

participants generally.⁹⁵ In addition, four commenters cited BLP's role in BSTP's proposed matching service and BLP's overall reputation as positive aspects of the BSTP application.⁹⁶ BSTP states that its application will promote fair competition, consistent with Section 17A(a)(2)(A),⁹⁷ and SS&C similarly notes that its application would allow for competition in the area of institutional trade matching.⁹⁸ In its comment letters, DTCC generally expressed support for the promotion of competition in service offerings to customers, including ETC and matching services to registered broker-dealers, investment managers, and custodians/settlement agents. DTCC states that competition in service offerings, including ETC and matching services to registered broker-dealers, investment managers, and custodians/settlement agents, may permit useful innovation and product alternatives, to the benefit of industry participants and ultimately to investors.⁹⁹

Despite general agreement on the benefit of competition among matching service providers, DTCC and the applicants disagreed on the specific terms under which new entrants would compete with Omgeo, the only current matching service provider. DTCC states that the conditions on access and pricing in the BSTP and SS&C notices should be reconsidered. While noting that the conditions are substantially the same as those imposed on Omgeo, DTCC offers several bases for modification: Changes in the marketplace (including DTCC's 2013 purchase of Thomson Financial's outstanding ownership interest in Omgeo), differences in the ownership and governance of Omgeo and the

applicants, differences in the related services offered by applicants' affiliates, differences in the pricing structures of Omgeo and the applicants, and changes in law and regulation since 2001.¹⁰⁰ DTCC states that the pricing and access conditions in the Omgeo order derived largely from concerns that central matching, which at the time was provided by DTC as an industry utility, would be performed by a separate for-profit entity in Omgeo. According to DTCC, the concern was that Omgeo could restrict competitors' access to DTC and give Omgeo an unfair advantage through differential pricing, lack of interoperability, and preferential treatment of Omgeo's clients by DTC. Therefore, Omgeo represented in its request for an exemption that it would not impose prohibitions or limit access to its services by potential customers, though it might terminate a subscription for failure to pay fees. According to DTCC, now that Omgeo is a wholly-owned subsidiary of DTCC, it does not compete with BSTP or SS&C for customers, while BSTP and SS&C are for-profit entities and therefore subject to the incentive to limit access to competitors.¹⁰¹ DTCC says the Commission should impose on BSTP, and where applicable BLP, pricing and access conditions appropriate to the specific roles of each within the national market system and the national clearance and settlement system.¹⁰²

In response to DTCC's comments above, SS&C comments that it is not for DTCC to determine the affordability of its offering but rather for the marketplace to decide. SS&C states that it is fully committed to honoring the pricing and access conditions set forth in the SS&C application and notice. SS&C also notes that while Omgeo may not compete for customers in the United States, it does in other jurisdictions, including Canada, where Omgeo and SS&C are already direct competitors.¹⁰³

DTCC also raises several competition concerns specific to the BSTP application. First, DTCC questions whether BSTP might bundle its matching service with other BLP services, raising potential antitrust concerns by creating a disincentive for BLP customers to use Omgeo's matching service. DTCC states that BLP should clarify its intentions with regard to

⁹¹ See 15 U.S.C. 78q-1(a)(2)(A).

⁹² See SIFMA AMF at 2.

⁹³ See Cornerstone Report at 5-6, 29-30.

⁹⁴ See AllianceBernstein at 1; Altieri; Anonymous; Connolly; Denci; Dore; Durant; Fidessa; James; Lang; Matthews; McCafferty; Naratil; Northrup Trust; Puskuldjian; Scuteri; SIFMA AMF at 1-2; Traiana.

⁹⁵ See AllianceBernstein at 1 (noting that reduced costs would be a natural economic byproduct of the increased availability of service providers, promoting trading and liquidity in the market); Ambos (noting that Omgeo's matching service potentially charged its group three times, as broker-dealer, outsourcer, and custodian, which the commenter stated may not be necessary if BSTP offers a matching service); Capital Market Solutions (noting that the ability to choose between matching services on a per-trade basis will help firms test services without having to invest in a large upfront cost); Connolly (noting that competition keeps prices at market rates); James; Lang (noting that adding a capable competitor in the post-trade processing space will lead to innovation which will ultimately result in lower transaction costs); Puskuldjian; Ransford; Scuteri (noting that competition allows the free market to dictate fair pricing); SIFMA AMF at 2; Traiana; see also Dore (noting that the absence of competition results in a lack of fee transparency).

⁹⁶ See Altieri; Connolly; James; Ransford.

⁹⁷ See BSTP May letter at 4; see also 15 U.S.C. 78q-1(a)(2)(A).

⁹⁸ See SS&C letter at 1.

⁹⁹ See DTCC June letter at 2; DTCC May letter at 2; DTCC April letter at 2.

¹⁰⁰ See DTCC April letter at 18-19.

¹⁰¹ See DTCC April letter at 18-19; DTCC May letter at 16; Cornerstone Report at 5-6.

¹⁰² See DTCC April letter at 19; Cornerstone Report at 5-6. For purposes of the below discussion, the Commission assumes that DTCC would seek to impose the same on SS&C and its parent company and/or affiliates.

¹⁰³ See SS&C letter at 5.

bundled pricing and that the Commission should clarify whether BSTP may offer different prices to distinct groups of customers while requiring fair access to BSTP's matching service. DTCC also requests that any determination to grant BSTP an exemption be expressly conditioned on BSTP not engaging either in tying of its matching service to other BLP services or in bundled pricing with respect to its matching service. DTCC requests that BSTP be required to make its matching service "separately available" to someone who does not wish to purchase any other BLP service.¹⁰⁴ Second, DTCC questions whether BSTP might deplete Omgeo's high-volume customer base, requiring Omgeo to either (i) raise prices on its remaining customers to cover its fixed costs or (ii) leave prices unchanged, thereby through DTCC subsidizing BLP's operations. DTCC stated that BSTP, as a for-profit entity, should not be allowed to provide matching services in an anti-competitive manner by targeting solely larger, more actively trading end-users while not permitting fair access to smaller, less active end-users. In this regard, DTCC also states that BSTP should not be allowed to condition use of its matching service on customers renting Bloomberg Terminals.¹⁰⁵

In response to the multiple comments summarized above, BSTP comments that DTCC's assertion of potential antitrust concerns has no merit and that DTCC does not offer any logical explanation of how approving the BSTP application, and thereby introducing Omgeo's first competitor, could harm competition, but notes that it may affect Omgeo's current monopoly and DTCC's own business interests.¹⁰⁶ BSTP also responds that there is nothing unusual or pernicious in the fact that BSTP will be a for-profit business, noting that many SEC-regulated entities, including those operating pursuant to exemptions, are for-profit. Indeed, BSTP further notes that, in the Omgeo order, the Commission observed that Omgeo would be operated on a for-profit basis.¹⁰⁷

Lastly, DTCC states that the Commission should require conditions on access to BSTP's FailStation product that are similar to those required for Omgeo's ALERT service and contained in the Omgeo order. DTCC cites BSTP's own description of FailStation as an industry utility that aggregates failed trade and settlement pre-matching data

from all trade counterparties in real time into a single report for the investment manager, custodian, and broker. DTCC draws parallels between access to FailStation and access to ALERT, noting that commenters expressed concerns about access to ALERT after the creation of Omgeo, and the conditions were included to provide assurances that other central matching services and persons that represent or otherwise provide services to customers (*i.e.*, end-users) of Omgeo would have access to ALERT on fair and reasonable terms.¹⁰⁸ BSTP responds that FailStation is a product offered by Bloomberg Finance LP and is made available to all market participants who wish to purchase it, and accordingly there is no reason to impose a regulatory obligation on BSTP to ensure FailStation remains accessible to market participants. In discussing the comparisons made by DTCC between FailStation and Omgeo's ALERT service, BSTP states that the two are completely different services because ALERT is a database of customer relationship information and settlement data that is shared by institutions, broker-dealers, and custodians. According to BSTP, FailStation is, by contrast, a tool that allows users of BSTP's service to monitor and manage pre- and post-settlement exceptions for a particular trade in real time.¹⁰⁹

Because of the interconnected nature of DTCC's many concerns raised above regarding the appropriateness of the access and pricing conditions contained in the BSTP and SS&C notices, the Commission will address them together. With respect to the absence of access and pricing conditions within the BSTP and SS&C applications reflective of their role in the marketplace, the Commission is unpersuaded that the prospect of bundling services, cross-subsidization of services, profitability, restrictions on access to unrelated services, and other like concerns merits denial or modification of the applications. To clarify, the Commission disagrees with DTCC's characterization of the historical purpose of these conditions under the Omgeo order as being tied to any particular applicant's ownership model or any particular marketplace structure.¹¹⁰ As the Commission stated in the Omgeo order, the Commission intended to require substantially the same conditions for other matching service providers,¹¹¹ and did not distinguish among future hypothetical

applicants on the basis of their non-profit or for profit status, governance structures, affiliated companies, or other factors related to the marketplace as a whole. Instead, these conditions were intended to assure that matching service providers other than Omgeo receive equal treatment by DTC, an affiliate of Omgeo.¹¹² Additionally, the Commission does not see how Omgeo's status as a subsidiary of DTCC affects whether it will compete with BSTP and SS&C. That Omgeo does not compete with any other matching service provider currently is solely a reflection of its position as the only current matching service provider in the U.S. market. Moreover, DTCC's comments, including its concern the BSTP may deplete Omgeo's high-volume customer base, demonstrate that DTCC does anticipate competing with BSTP and SS&C for customers, in line with the Commission's expectation that market forces resulting from the introduction of multiple matching service providers would necessarily drive customer choice in this regard.

The Commission also disagrees with DTCC's attempts to draw a parallel between the role that DTC and associated settlement system products (such as ALERT) play in the national clearance and settlement system and the role that Bloomberg Terminals, FailStation, and other BLP products play in the national clearance and settlement system. Despite any promotional claims that such products are industry utilities, from a regulatory perspective, Bloomberg Terminals, FailStation, and other BLP products primarily provide functionality for executing trades rather than clearing and settling trades. DTC, in contrast, as a registered clearing agency and the CSD for U.S. equities, is a critical element of the national system for clearance and settlement. In addition, the arguments presented by DTCC raising concerns over the potential for BSTP to bundle are speculative and the Commission believes that allowing market forces to determine whether bundling, Bloomberg Terminals access, or any other factor influences either high- or low-volume customer choice to be appropriate at this juncture.

With respect to modifying the conditions as applied to SS&C and BSTP, the Commission believes that market conditions continue to support consistent treatment across matching service providers. The Commission believes that a potential overlap in targeted customer bases between the

¹⁰⁴ See DTCC April letter at 21 & n.64.

¹⁰⁵ See *id.* at 19 & n.59.

¹⁰⁶ See BSTP May letter at 22.

¹⁰⁷ See *id.* at 19–20 n.59.

¹⁰⁸ See DTCC April letter at 20 & n.63.

¹⁰⁹ See BSTP May letter at 26 & n.83.

¹¹⁰ See, e.g., DTCC April letter at 18–19; see also DTCC May letter at 16.

¹¹¹ See Omgeo order, *supra* note 37, at 20498.

¹¹² See *id.*; see also *supra* note 43 and accompanying text.

applicants and Omgeo is not a sufficiently compelling reason to support modifying the conditions because the conditions were included to facilitate competition and that necessarily implied competition for customers.

With respect to innovation, both BSTP and SS&C state that their applications will promote new data processing techniques and technology-driven solutions. For example, SS&C states that its service stands out in terms of its flexibility,¹¹³ while BSTP states that its offering stands out in terms of potential synergies with other tools currently used.¹¹⁴ Congressional findings cite to techniques that create the opportunity for more efficient, effective, and safe procedures, and the Commission believes that the description of services in the BSTP and SS&C applications may promote such opportunities, which are consistent with the public interest and the protection of investors.

On balance, the Commission believes that the access and pricing conditions in the BSTP and SS&C notices would promote fair competition. New entrants such as BSTP and SS&C could foster competition in the provision of matching services by competing with Omgeo by reducing the cost of matching services to broker-dealers and institutional customers or increasing the quality or type of services offered. Competition, in turn, could foster innovation in the market for matching services, resulting in more efficient matching and communications systems.

i. Impact of Applicants' Workflows on Competition, Choice and Innovation

Competition, choice, and innovation are not only addressed by commenters in the context of the general prospect of new entrants BSTP and SS&C, but also within the context of the discussion raised by DTCC regarding BSTP and SS&C's multiple access model workflow and DTCC's alternative single access model workflow. DTCC states that the Commission should distinguish competition in central matching from competition in access to settlement and related functions (e.g., providing internal control numbers and sending matching confirmation and settlement instructions to settlement agents and DTC). The Commission has previously described DTCC's position that the single access model is the optimal way to support competition in matching in

Part III.B.2.i.¹¹⁵ DTCC states that requiring BSTP and SS&C to send trade instructions to DTC solely through the existing infrastructure would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because it would be justified by the benefits to the clearance and settlement system resulting from greater visibility for DTC and its participants into pre-settlement trade activity, enabling firms to correct errors before fails occur and reducing the number of places in the trade lifecycle where an error in settlement could occur without imposing additional costs on industry, as DTCC states the multiple access proposal would.¹¹⁶

In response, BSTP states that using Omgeo, as DTCC proposes, creates an unjustified barrier to entry, discouraging vendors from entering the matching services business because of the limited scope of services they would be able to provide outside Omgeo and because a competitor, Omgeo, would continue to control certain basic matching services functions. For example, BSTP states that such a workflow would place a competitor between the matching service provider and DTC, and between the matching service provider and custodians and settlement agents.¹¹⁷ BSTP states that DTCC's recommendation to use Omgeo reflects a fundamental conflation of DTCC's commercial interests as an unregulated holding company with the regulatory obligations of its subsidiaries, including DTC and Omgeo. BSTP further notes that the Cornerstone Report focuses primarily on how the approval of the BSTP application could affect Omgeo and Omgeo's business model, which BSTP states is itself rooted in a de facto monopoly over matching services. BSTP notes that DTC is subject to the full range of requirements under Section 17A of the Exchange Act while Omgeo is subject to the terms of the Omgeo order. BSTP states that DTCC fails to distinguish between its own corporate business interests and the requirements applicable to DTC under the Exchange Act and Omgeo under the Omgeo order.¹¹⁸ BSTP also states that mandating usage of Omgeo would hamper innovation because it would preserve the status quo, eliminating incentives for DTCC and its affiliates to

innovate or to upgrade or improve infrastructure.¹¹⁹

BSTP states that direct access to DTC is essential to the matching services concept and critical to the national system for clearance and settlement. BSTP states that DTCC's recommendation for a single-access model draws a fundamentally incorrect and inappropriate dichotomy by highlighting the distinction between matching services and access to settlement functions because it suggests that a matching service consists only of the internal function of comparing data and not the function of transmitting an affirmed confirmation to DTC. BSTP notes that previous Commission statements have clarified that a matching service seeking an exemption from registration as a clearing agency would be required to establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades.¹²⁰ According to BSTP, this recognizes that the capability of a matching service to send affirmed trades directly to DTC is critical to a safe and sound process for clearing and settling trades in the national clearance and settlement system, and that mandating the use of Omgeo would frustrate and impair the benefits that matching services bring to market participants.¹²¹

BSTP also states that mandating the use of Omgeo would be inconsistent with DTC's obligations as a registered clearing agency. Citing Section 17A(b)(3)(F) and (I) of the Exchange Act, BSTP states that DTC has an obligation to maintain rules that foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, that remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and that do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. BSTP states that mandating the use of Omgeo would be inconsistent with these obligations because DTCC would have the Commission adopt a requirement that favors one or more of DTCC's wholly-owned subsidiaries when Section 17A imposes an affirmative obligation to facilitate the development of matching services in a manner that

¹¹⁹ See *id.* at 7.

¹¹⁵ See DTCC June letter at 2–3; DTCC May letter at 2; DTCC April letter at 3.

¹¹⁶ See DTCC April letter at 14 n.45.

¹¹⁷ See BSTP May letter at 6–7.

¹¹⁸ See *id.* at 8–9.

¹²⁰ See *id.* at 9. For discussion of previous Commission statements on the requirements that an entity seeking an exemption to provide matching service would need to satisfy, see the Matching Release, *supra* note 13, at 17947 n.28.

¹²¹ See BSTP May letter at 10.

¹¹³ See BSTP letter at 3–4.

¹¹⁴ See SS&C letter at 3.

does not burden competition and that facilitates the linking of clearance and settlement facilities.¹²²

BSTP notes that access to DTC was a major concern when the Commission issued the Omgeo order, and the Commission has above already assessed DTC's arguments regarding efficient access to DTC against the historical background to the Omgeo order and related DTC rule filings.¹²³ For example, citing DTCC's comment letters from that period, BSTP states that, in moving TradeSuite to Omgeo, DTCC promised that vendors acting on behalf of DTC participants will be able to transmit settlement instructions directly to DTC without the involvement of Omgeo.¹²⁴ BSTP also cites DTCC's comment letter stating that it shall not favor any single matching service provider over any other in terms of the quality and caliber of the interface to DTC's clearing agency or settlement functions, quality of connectivity, receipt of delivery and payment orders, speed or processing of delivery and payment orders, capacity provided, or priority assigned in processing delivery and payment orders. BSTP also cites DTCC's statement that DTC's longstanding practice of providing members of the financial industry with equal, standardized access to DTC's services will continue after the formation of Omgeo, and that such practice is required by Section 17A of the Exchange Act and subject to Commission oversight.

Further, BSTP states that mandating the use of Omgeo would require DTC to propose an unjustifiable rule change. BSTP notes that, as a registered clearing agency, DTC is a rules-based organization, and BSTP further notes that DTCC has cited to no rule that would require matching services to use Omgeo to access DTC. BSTP states that, if DTC wished to adopt such a requirement, it would be required to submit a proposed rule change, subject to notice, public comment, and Commission review and approval. BSTP notes that DTC has not submitted such a proposed rule change and further notes its belief that any such proposed rule change would be unsupportable under the Exchange Act.¹²⁵

SS&C states in its letter that it is in complete agreement with BSTP's response on matters where the concerns raised by DTCC are substantially the same between the BSTP and SS&C applications, including the single versus

multiple access question.¹²⁶ Separately, SS&C also notes that, under DTCC's proposal for a single access model, competition as it relates to institutional post-trade processing would be confined to central matching while all other key ancillary services would remain outside this scope, subject to DTCC control as part of Omgeo. As noted previously, SS&C infers from DTCC's position that Omgeo would impose the same charges on competing matching services as they do on clients today and states that, should the Commission accept this position, SS&C doubts that any service would find it economically viable to enter the market for post-trade services to compete with Omgeo.¹²⁷

The Commission is unpersuaded that, in considering the prospect of competition among matching service providers, it must find that a single, direct link to DTC through Omgeo is the only outcome sufficient to support approval of the BSTP and SS&C applications. As discussed previously, the Commission has already approved DTC rule change SR-DTC-2001-11, which authorized DTC to accept from a matching service provider a file of deliver order instructions to settle transactions between DTC participants that have authorized DTC to accept such instructions from the matching service provider.¹²⁸ The Commission notes that DTCC states that its Investment Management System ("IMS") may receive deliver orders from multiple sources, including Omgeo as well as other matching service providers.¹²⁹

Further, the Commission is unpersuaded that it should deviate from this existing regulatory framework because of DTCC's proposed vision for how competition among matching service providers could work. As discussed above, the Commission notes that it has previously described its expectation that an entity seeking an exemption as a matching service provider would be required to establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades.¹³⁰ The Commission specifically expressed concern about the concentration of risk

that occurs in an entity that performs matching services instead of dispersing that risk more broadly to broker-dealers and their institutional customers. The Commission's concerns regarding concentration of risk—whether through aggregation of activity in multiple matching service providers, or further aggregation of trade enrichment activity under a single access model—remain unchanged from those expressed in the Matching Release, even if multiple links to DTC result in some implementation costs.

4. Systemic Risk

Within the concept of requiring linked or coordinated facilities for clearance and settlement of securities transactions is the implication that any one facility that is connected to other facilities could generate externalities that can affect the system as a whole. If such externalities can create disruptions to the national system for clearance and settlement, then the prospect of such systemic risk implicates facilitating the establishment of linked or coordinated systems.

The Commission received multiple comments addressing the expected effect of the BSTP and SS&C applications on systemic risk. BSTP notes in its comment letter that the BSTP application promotes investor protection by providing a prompt and accurate matching service that eliminates a single point of dependency in the current market infrastructure for matching services, thus enhancing the robustness of the clearance and settlement system.¹³¹ As noted above, BSTP also highlights that its application promotes efficiency by enabling straight-through processing throughout the entire trade lifecycle, which it states will contribute to increases in same-day affirmation rates and in settlement rates.¹³² As to SS&C, as noted above, SS&C states that it is in agreement with BSTP on those points that overlap between the BSTP and SS&C applications.¹³³

Multiple commenters agree with BSTP and SS&C. Ten commenters note that increasing the number of matching service providers would remove the single point of dependency present in the existing market infrastructure for matching services, decreasing the risks associated with a single point of failure.¹³⁴ Similarly, four commenters

¹²⁶ See SS&C letter at 4.

¹²⁷ See SS&C letter at 3. For prior discussion of these expected surcharges, see Part III.B.2.i, and *supra* notes 53–54 and accompanying text.

¹²⁸ See *supra* notes 47–50 and accompanying text.

¹²⁹ See DTCC, Inventory Management System, available at <http://www.dtcc.com/asset-services/settlement/inventory-management-system> (last accessed Nov. 2, 2015) (discussing IMS transaction types, including code "MITS"—matched institutional deliveries sent to IMS from Omgeo or another matching utility).

¹³⁰ See Matching Release, *supra* note 13, at 17947 n.28.

¹³¹ See BSTP May letter at 3; see also BSTP August letter at 2–4.

¹³² See *id.*; see also *supra* note 31 and accompanying text.

¹³³ See *supra* note 24 and accompanying text.

¹³⁴ See AllianceBernstein at 1; Ambos; Capital Market Solutions; Connolly; Denci; Fidessa;

¹²² See *id.*

¹²³ See *supra* notes 37–50 and accompanying text.

¹²⁴ See BSTP May letter at 10.

¹²⁵ See *id.* at 12.

cite improved confirmation/affirmation rates overall as anticipated benefits of having multiple matching service providers,¹³⁵ and one of those commenters also notes the related benefit of a likely reduction in settlement fails.¹³⁶ An additional commenter supports the approval of additional providers of matching services where the matching service (i) supports standardized message formats and processing procedures, (ii) adheres to interoperability principles with current and future providers, (iii) accommodates increased volume on a scalable basis sufficient to function as a continuity of business alternative in the event other providers experience operational issues or failure, (iv) facilitates a shortened settlement cycle, and (v) supports straight through processing.¹³⁷

In its comment letters and in the Cornerstone Report, however, DTCC raises multiple concerns about the effect of the applications on systemic risk. Central to the disagreement between the applicants and DTCC is whether BSTP and SS&C should have direct access to DTC. Further, to the extent that BSTP and SS&C have direct access to DTC, DTCC states that such linkage arrangements may increase systemic risk to the market's settlement infrastructure. DTCC also disagrees with commenters stating that the BSTP and SS&C applications will alleviate the single point of dependency problem that exists in the current market infrastructure, stating that a single market participant is unlikely to subscribe to two separate matching service providers and therefore not increase the resiliency that results from redundant systems.¹³⁸ In addition, DTCC raises other concerns regarding the solvency of BSTP, SS&C, their respective parent companies, and their respective affiliates; the resiliency of SS&C, its parent company, and its affiliates; and the volume limits represented in the SS&C application.

Northern Trust; Ransford; Scuteri; SIFMA AMF at 2.

¹³⁵ See Capital Market Solutions; Lang; Matthews; Puskuldjian.

¹³⁶ See Puskuldjian.

¹³⁷ See Citi at 1–2. The Commission notes that the aspects of this comment are addressed throughout this order: Concerns related to standardized messaging formats and processing procedures are discussed in Parts III.B.2.i, iii, and iv; concerns related to the sufficiency of an applicant to provide a business continuity alternative are discussed in Part III.B.5; concerns related to interoperability are discussed in Part III.B.7; and concerns related to a shortened settlement cycle and straight-through processing are discussed in Part III.B.2.ii.

¹³⁸ See Cornerstone Report at 4–5.

i. Single Point of Dependency

First, BSTP states that Omgeo represents a single point of failure for matching services because it is the only means of accessing DTC for settlement.¹³⁹ BSTP states that a resilient environment is needed in matching services, which can be achieved through the introduction of additional matching service providers if they are allowed to establish separate, redundant connections to DTC and market participants.¹⁴⁰ BSTP states that centralization of records is worrisome and that introducing an additional venue for storing records will benefit the marketplace by alleviating reliance on a single entity.¹⁴¹ BSTP notes that a single access model would prevent the establishment of separate, direct connections to DTC and therefore eliminate the benefit that multiple pathways would provide, such as alleviating message traffic congestion during high volume trading periods (such as near the time of market close). In its comment letters, BSTP states that it will provide increased resiliency by providing an alternative means for affirmed confirmations to be transmitted to DTC, custodians, and settlement agents.¹⁴²

DTCC counters that allowing both BSTP and SS&C to access DTC directly would increase systemic risk relative to a single access model because a single access model has fewer interfaces within the market infrastructure that provides matching services, meaning fewer potential points of failure, less complexity, and therefore less risk to the national clearance and settlement system.¹⁴³ DTCC also notes that, under the current model, when a broker-dealer executes an institutional trade, they provide a trade record and Omgeo assigns a control number to be used throughout the trade lifecycle, allowing DTC, market participants, and regulators to track the phases of one or more trades over time.¹⁴⁴ In addition, the Cornerstone Report states that a multiple access model can only reduce the single-point-of-dependency problem during a matching service provider outage when the two parties to a trade

¹³⁹ See BSTP May letter at 6.

¹⁴⁰ See BSTP August letter at 3–4. BSTP cites to recent events in which the presence of multiple service providers and points of connectivity helped facilitate trading on alternate trading venues when the primary listing venue suffered a disruption. See *id.* at 4 & n.12.

¹⁴¹ See *id.* at 17.

¹⁴² See *id.* at 8.

¹⁴³ See DTCC April letter at 11, 13; Cornerstone Report at 6, 23.

¹⁴⁴ See DTCC April letter at 7; DTCC May letter at 3–15.

have access to multiple matching service providers and can easily transition from using one to using the other.¹⁴⁵ The Cornerstone Report also states that, even if a second market entrant could feasibly provide matching services, further complexities may arise when additional entrants become matching service providers.¹⁴⁶

The Commission notes that it has already addressed several arguments related to efficiency concerns regarding access to DTC in Part III.B.2.i. On the single point of dependency question, the Commission agrees with BSTP and disagrees with DTCC. As DTCC correctly notes, the risk that the clearance and settlement system would fail during times of market stress, such as the 1987 market break, has been described as the single most important threat to the U.S. financial system, and that settlement failures, if widespread, can have a systemic impact on the national clearance and settlement system while imposing significant costs on market participants.¹⁴⁷ As described above, the Commission maintains the concerns it expressed within the Matching Release with respect to concentration of processing risk in a single matching service provider.¹⁴⁸ On balance, the Commission believes that the redundancy created by more interfaces and linkages within the settlement infrastructure increases resiliency, as suggested by BSTP. In the event of a disruption in services at Omgeo, the redundancy facilitated by the addition of matching services provided by BSTP and SS&C makes it more likely that market participants can continue to match and settle trades than if Omgeo stands as a necessary intermediary for settlement at DTC.

The Commission acknowledges, as noted by DTCC, that in order for one matching service provider to facilitate redundant access to DTC in the event Omgeo or another matching service provider experiences a disruption, customers will need to have access to multiple matching service providers. The Commission notes that, unlike participants in a CCP, customers of a matching service provider are not subject to requirements to determine suitability for membership. Because obtaining access to a matching service provider is not subject to determinations regarding suitability for membership, the Commission expects that customers could gain access to a secondary matching service provider with enough

¹⁴⁵ See Cornerstone Report at 23–24.

¹⁴⁶ See *id.* at 41.

¹⁴⁷ See DTCC April letter at 1–2, 3.

¹⁴⁸ See Matching Release, *supra* note 13, at 17946.

ease to meaningfully reduce disruption to the marketplace, as compared to a scenario where access to DTC is not redundant.

With respect to the direct links proposed by the BSTP and SS&C applications, the Commission is unpersuaded that the prospect of increased technical complexity merits denial or modification of the applications. As BSTP notes in its comment letter, technological improvements since approval of the Omgeo order have increased the ability to establish safe and secure communication links.¹⁴⁹ Further, BSTP states that there is nothing new or unique about the activities that will be required of DTC to establish an interface with BSTP. BSTP states that it would expect to use the same protocol as Omgeo, and notes that the comment letters demonstrate that market participants do not view linkage requirements as disadvantageous.¹⁵⁰ According to BSTP, whether the trade instructions are in a proper format requires only the use of an agreed protocol. BSTP further states that BSTP's matching service will use industry standard communication, message, and file-transfer protocols and will be able to ensure that the trade instructions sent to DTC are in the proper format.¹⁵¹ BSTP states that, like many industry participants, its affiliates also currently maintain as part of their day-to-day operations multiple connections with a variety of pre- and post-trade services (including Omgeo) using FIX and other standardized protocols.¹⁵² As BSTP correctly notes, even DTCC acknowledges that Omgeo currently interfaces with over 60 vendors, including a BSTP affiliate, on behalf of its customers.¹⁵³

The Commission acknowledges that there may be externalities associated with a settlement infrastructure where multiple competing matching services link to DTC. Such externalities could manifest if, for example, a systems failure at BSTP reduces the ability of DTC to process transaction information received from Omgeo or SS&C. In such a scenario, BSTP may not fully internalize the costs of errors in its systems because a portion of these costs

are imposed on its competitors. The Commission believes, however, that the interoperability conditions, along with the requirements in Regulation SCI for SCI entities to coordinate the testing of business continuity and disaster recovery plans on an industry-wide basis,¹⁵⁴ help to mitigate the risk that one or more matching services with access to DTC could establish systems that significantly externalize the consequences of systems malfunctions to the national system for clearance and settlement.

In addition, DTCC notes two other benefits of its single-access model: (i) DTC would receive earlier warnings of potential problem transactions, which would reduce disruptions and improve the reliability and efficiency of the national clearance and settlement system; and (ii) exclusive reliance on Omgeo for access to DTC, NSCC, and the custodians/settlement agents would permit DTCC to facilitate future developments in the operational systems used to generate trade instructions for clearance and settlement, thereby reducing risk of system disruptions or system incompatibilities that result in trade failures.¹⁵⁵ The Commission does not see why these benefits cannot materialize if the BSTP and SS&C applications are approved. BSTP, for example, is proposing to include as part of its matching service other services that provide information to custodians and other stakeholders earlier in the settlement process than currently provided, which may also reduce the number of problem transactions. Similarly, approving the BSTP and SS&C applications does not prevent DTCC from facilitating future developments in the operational systems used to generate trade instructions for clearance and settlement. On the contrary, with three matching service providers, the number of entities that may be working to facilitate new developments in the generation of trade instructions will be increased.

Second, DTCC states it is essential that only one entity issue control numbers because multiple issuers of control numbers would greatly increase the likelihood of settlement errors.¹⁵⁶ DTCC therefore recommends that

regardless of where a trade is centrally matched, the broker be required to send a trade record and obtain a control number for that trade from Omgeo in a manner that facilitates the single access model, as the electronic confirmation and matching process is currently conducted.¹⁵⁷ DTCC further states that centralizing time-stamped trade records in this way allows DTC and settlement agents to more efficiently and effectively settle trades that have failed to settle on the scheduled date while allowing market participants to reconstruct trades or unwind positions as appropriate. DTCC notes that the time-stamped audit trail has allowed DTC and its affiliates to reconstruct trades after September 11, 2001, the bankruptcy of Lehman Brothers in 2008, and the "flash crash" in 2010, among other significant market events. DTCC also states that this centralized record allows DTC, market participants, and regulators to piece together events that cause market stress and has provided enormous benefit to regulators in examining trading history among investment managers and broker dealers.¹⁵⁸ DTCC states that, under a multiple access model, these efforts would be severely hampered, perhaps even lost.¹⁵⁹ It states that, because DTCC's audit records are centralized, the industry can evaluate affirmation and settlement rates industry-wide because only a single entity has the records of all institutional trades from execution through settlement. Bifurcating this process, according to DTCC, would make it more difficult to monitor improvements and spot trends in affirmation and settlement rates, including, in particular, spotting the points in transactions where failure is most likely to occur.¹⁶⁰

BSTP acknowledges that, ideally, there should be one issuer of control numbers and that, because it is essential to the safe and sound settlement of securities transactions, it is the responsibility of DTC to provide control numbers as a registered clearing agency.¹⁶¹ BSTP states that the creation of control numbers, the transmission of control numbers to the parties involved in settlement, and the transmission of settlement instructions to DTC are critical components of post-trade processing and, as such, are elements of the national clearance and settlement system that must be provided on a fair

¹⁴⁹ See BSTP May letter at 11.

¹⁵⁰ See *id.* at 13 (citing to SIFMA AMF for the point that additional service providers will permit firms to improve upon contingency strategies and disaster recovery models as well as allow firms to diversify their support model and mitigate risk by moving trade volume to other service providers if one is experiencing interruptions or outages).

¹⁵¹ See *id.* at 15.

¹⁵² See *id.*

¹⁵³ See *id.* at 12 n.37.

¹⁵⁴ See 17 CFR 242.1004(c). Application of Regulation SCI to exempt clearing agencies is addressed in Part III.B.8.

¹⁵⁵ As an example, DTCC cites a recent approved rule change in support of DTC's settlement matching initiative, intended to reduce uncertainty in the settlement of institutional transactions at DTC. See DTCC April letter at 14 n.44.

¹⁵⁶ See *id.* at 15.

¹⁵⁷ See *id.*

¹⁵⁸ See DTCC April letter at 7.

¹⁵⁹ See *id.* at 8.

¹⁶⁰ See *id.*

¹⁶¹ See BSTP May letter at 14.

and non-discriminatory basis by DTC.¹⁶²

BSTP explains that, contrary to DTCC's claim that a specific time for obtaining a control number should be incorporated into BSTP's application, incorporating a control number in the matching process is well understood. BSTP cites the Matching Release in explaining that the control number is obtained from DTC during the process of confirming the terms of a trade with the broker-dealer involved in the trade.¹⁶³ As mentioned above in Part III.B.2.iii, BSTP notes that DTC could ensure that control numbers generated by BSTP are distinguishable from those generated by Omgeo.¹⁶⁴ BSTP also notes that a control number is required to be obtained by qualified vendors of ETC services, and notes that FINRA Rule 11860 does not require the use of the Omgeo-centric existing infrastructure by qualified vendors.¹⁶⁵

The Commission has previously addressed the concerns regarding issuance and management of control numbers above in Part III.B.2.iii, including DTCC's concerns regarding centralization of trade data. The Commission does not view the prospect of a multiple access model as being inconsistent with the ability to have a centralized source of control numbers. Consequently, the Commission finds the systemic risk concerns cited by DTCC on this matter to be unpersuasive.

Lastly, the Cornerstone Report raises concerns that, because of the potential increase in systemic risk resulting from the approval of multiple matching service providers, market participants' ability to comply with Regulation SCI may be impaired.¹⁶⁶ The Commission views this argument as speculative and unpersuasive. Neither DTCC nor the Cornerstone Report identify how a market participant, or even which

market participant, might find it harder to comply with Regulation SCI in the wake of the Commission approving new matching service providers. Neither DTCC nor the Cornerstone Report estimate any costs that might result from such changes either. Further, the Commission notes that industry-wide testing required under Regulation SCI should not be negatively impacted by whether the number of participants in any particular market segment ebbs and flows from one year to the next. The Commission believes the benefit of removing a single point of dependency, as discussed above, is consistent with the public interest and the protection of investors and supports the approval of new matching service providers.

ii. *Solvency of Applicants*

DTCC raises concerns about how the sudden insolvency of either BSTP or SS&C might raise systemic risk concerns in the event that market participants, who had come to rely on the availability of BSTP and SS&C as matching service providers, were no longer able to use their matching services.¹⁶⁷ DTCC states that the benefits of the BSTP and SS&C applications may ultimately be fleeting because BSTP and SS&C are private companies that may become insolvent or choose to forego or discontinue providing matching services after a short time if providing such services does not prove to be profitable or otherwise advisable.¹⁶⁸ DTCC suggests that insolvency is more likely for BSTP and SS&C because they are for-profit companies, and notes that the potential insolvency of either of their parent or affiliate companies could raise the same concerns. DTCC implies that, as an industry-owned utility, Omgeo does not carry the same level of risk. DTCC states that if either BSTP or SS&C ceased to provide matching services after the industry had become reliant on it to perform such services, the likelihood of failed trades could increase and the industry may need to undergo an extensive reintegration period to onboard market participants. Accordingly, DTCC believes that BSTP, SS&C, and their parent and affiliate companies should each be required to provide additional assurances regarding insolvency.

BSTP responds that it has devoted substantial resources to developing its matching service, is committed to that matching service, and is adequately capitalized. In addition, BSTP states that, as part of obtaining an exemption

from registration as a clearing agency, BSTP has agreed to provide the Commission annual audited financial statements, and states that no additional assurances regarding financial strength should be necessary.¹⁶⁹ Similarly, SS&C responds that DTCC's concerns are speculative and unfounded. SS&C notes that it is a public company and therefore publishes audited financial statements which are also supplied to the Commission. SS&C states that no further assurances regarding financial strength are necessary.¹⁷⁰

With respect to the future potential insolvency of the applicants, their parents, and their affiliates, the Commission believes such speculation does not merit denial or modification of the applications at this time. DTCC provides no rationale for why, as for-profit entities, BSTP and SS&C, or their parent companies or affiliates, are more likely to become insolvent than Omgeo or DTCC. Indeed, the Commission notes that DTCC's own Cornerstone Report suggests that, in a market with multiple matching service providers, Omgeo may find itself no longer financially viable.¹⁷¹ Should the prospect of insolvency of a matching service provider materialize, the Commission can consider modifying or revoking an exemption from registration under certain procedures, addressing the specific conditions as they arise.

Further, the Commission is mindful that, during an extended service outage, the failure of a single matching service provider could cause significant disruption to the financial markets. In this regard, denying the BSTP and SS&C applications would preserve such risk and leave it concentrated in a single entity because Omgeo is currently the only matching service provider for the U.S. equity markets. The Commission believes that approving the BSTP and SS&C applications could help mitigate this risk.

iii. *Resiliency of Applicants*

DTCC expressed concerns regarding whether BSTP and SS&C systems would have the capacity to handle the significant amount of potential order flow, particularly during the high volumes that can occur during times of market stress or volatility, noting that Omgeo has developed with its customers both direct proprietary links to existing systems as well as web-based linkages and interfaces hosted by third party order management systems and

¹⁶² See BSTP August letter at 5 (citing statements regarding the issuance of control numbers made in the Cornerstone Report at 21).

¹⁶³ See *id.* at 14 n.42 (citing 63 FR at 17944–45).

¹⁶⁴ See *id.* at 14 n.41.

¹⁶⁵ See *id.* at 14 n.40. BSTP also clarifies that it will be authorized under FINRA Rule 11860 to be utilized for the electronic confirmation and affirmation of all depository-eligible transactions if the Commission grants an exemption. See *id.* at 25–26. In the Matching Release, the Commission stated that, in the process of considering whether to grant an exemption, an entity would have to meet the requirements to become a qualified vendor under the relevant SRO rules because they are necessary elements in providing a matching service. See Matching Release, *supra* note 13, at 17947 n.27.

¹⁶⁶ See Cornerstone Report at 32–35, 36–37. The Commission notes that this particular issue raised in the Cornerstone Report is directed at whether BSTP and SS&C specifically can comply with Regulation SCI. Concerns regarding general compliance by exempt clearing agencies with Regulation SCI related are addressed in Part III.B.8.

¹⁶⁷ See DTCC April letter at 17–18 (as to BSTP); DTCC May letter at 15 (as to SS&C).

¹⁶⁸ See *id.* at 12 n.37.

¹⁶⁹ See BSTP May letter at 20.

¹⁷⁰ See SS&C letter at 4.

¹⁷¹ See Cornerstone Report at 22.

vendors.¹⁷² DTCC states that the proprietary linkages can handle tremendous trading volumes, as has been demonstrated repeatedly in the past, including during the 2010 “flash crash.”¹⁷³

The Commission is satisfied that both the BSTP and SS&C applications provide sufficient assurances regarding their proposed risk management framework. First, as SS&C notes in its comment letter, SS&C Canada and SSCNet have represented that they are staffed adequately with qualified and experienced industry veterans that have been in the post-trade services industry for decades and notes that it has long advocated for responsible growth when it comes to staffing numbers, facilities, and infrastructure. SS&C also represented that it has consistently applied stress and capacity disciplines during its history to ensure the soundness of its post-trade application.¹⁷⁴ Similarly, BSTP represented that it has planned for adequate systems capacity and conducts stress testing. It also represented that BSTP and its affiliates have a comprehensive business continuity management program to ensure a timely response to, and effective recovery from, unanticipated business interruptions that may affect facilities, technology, and/or people. BSTP represented that, to minimize business interruption events, BSTP will undertake continuous monitoring and identification of potential risks and take action designed to mitigate the impact of these risks.¹⁷⁵

The Commission discusses concerns specific to BSTP and SS&C’s operational risk management frameworks below in Part III.B.5. Concerns raised by DTCC in response to the cross-border nature of the SS&C application are addressed in Part III.B.5.i below as well.

iv. Volume Limits in the SS&C Application

DTCC notes that the SS&C application represents that SS&C will only match up to one percent of the U.S. aggregate daily volume of securities trades and would seek an amendment 180 days prior to exceeding that limit, which means that SS&C may have to refuse to provide matching services to some trades in some instances, which may create problems for market participants that are uncertain whether their trades would be accepted for matching by

SS&C.¹⁷⁶ The Commission is mindful of this concern, and requested an amendment, which SS&C submitted on November 9, 2015 to remove the representation regarding volume limits. The Commission agrees that volume limitations may create uncertainty as to whether SS&C’s matching service is able to match trades, increasing the risk that a trade may fail in the event that SS&C has unexpectedly exceeded the volume limits represented in its application. Therefore, the Commission does not believe that volume limitations are necessary for the SS&C application to be consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

5. Operational Risk

Under Section 17A of the Exchange Act, applicants must demonstrate that they are so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. Questions of capacity have previously been addressed in Parts III.B.2.ii, in connection with facilitating access to DTC, and III.B.4.iii, in connection with questions about the applicants’ resiliency. Nevertheless, several comments raised concerns related to particular operational risks, and the Commission considers such concerns below.

With respect to operational risk management, DTCC notes that its own regulated affiliates have each been subject to business continuity standards higher than those set forth in Regulation SCI.¹⁷⁷ DTCC states that BSTP, SS&C, and their parent companies should be held to the same standard. DTCC also states that the Commission should also hold the parents and affiliates of BSTP and SS&C to the same standards of internal controls, security, and business continuity as the Commission holds other critical participants in the national clearance and settlement system to the extent those parents and affiliates are relied upon to perform matching services because that would best serve the public interest and the protection of investors.¹⁷⁸ In addition, because BSTP seeks to license from BLP the operations and systems to conduct its matching service, DTCC states that both BSTP and BLP should be subject to the full panoply of legal and regulatory requirements under Regulation SCI, and that BLP should be required to make

available its books and records, as well as its operating systems, to inspection by the Commission upon request.¹⁷⁹ Similarly, because SS&C seeks to rely on SS&C Canada for the operations and systems to conduct central matching, DTCC states that both SS&C and SS&C Canada should be subject to the full panoply of legal and regulatory requirements under Regulation SCI and ARP.¹⁸⁰ DTCC notes that both BSTP and SS&C would have relatively small staffs to oversee their matching services.¹⁸¹

BSTP responds that it is staffed with an adequate number of qualified and experienced personnel to operate BSTP. BSTP notes that its staff includes industry veterans who know the marketplace and are well suited to operate BSTP and ensure that BSTP complies with all applicable regulatory standards, including stringent business continuity, information security, and capacity testing plans and procedures.¹⁸² With respect to Regulation SCI, BSTP notes that DTCC’s regulated affiliates (namely, DTC, NSCC, and FICC) are subject to high standards because they are registered clearing agencies and have been designated as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. BSTP notes that Omgeo is not a registered clearing agency and has not been designated systemically important, and therefore the standards applicable to DTCC’s registered clearing agency subsidiaries do not apply to Omgeo.¹⁸³

SS&C responds that, if granted an exemption, all parts of the SSCNet matching service would be subject to Regulation SCI. SS&C states that there is no legal basis for Regulation SCI to apply to the broader SS&C complex, however, because those affiliates and subsidiaries are not within the scope of entities subject to Regulation SCI under the conditions proposed in the SS&C notice. SS&C further states that SSCNet will be subject to and intends to comply with all of the standards specified by the Commission that are applicable to exempt clearing agencies.¹⁸⁴ SS&C also adds that DTCC’s proposed single access model would pose greater security and confidentiality risks than a multiple access model because transactions involving non-Omgeo clients would have to be routed through the existing

¹⁷² See DTCC May letter at 17; DTCC April letter at 22.

¹⁷³ See DTCC May letter at 17 & n.42.

¹⁷⁴ See SS&C letter at 5.

¹⁷⁵ See BSTP May letter at 22.

¹⁷⁶ See DTCC May letter at 17 n.41.

¹⁷⁷ See *infra* note 246.

¹⁷⁸ See DTCC May letter at 3; DTCC April letter at 7, 21–22.

¹⁷⁹ See DTCC June letter at 4–5; DTCC April letter at 21–22 & n.67.

¹⁸⁰ See DTCC September letter at 3; DTCC May letter at 17.

¹⁸¹ See DTCC April letter at 21; DTCC May letter at 16–17.

¹⁸² See BSTP May letter at 21.

¹⁸³ See *id.* at 25.

¹⁸⁴ See SS&C letter at 5.

Omgeo infrastructure, thereby exposing confidential information to a competitor (Omgeo) that otherwise is not a party to the transaction.¹⁸⁵

The Commission addresses concerns specific to the cross-border nature of SS&C's operations below. More generally, the Commission notes that there has been a long history of parent and affiliate companies providing facilities management and operational support for clearing entities, and this has been accepted by the Commission in the past. For example, in 1972 the New York Stock Exchange and Amex founded the Securities Industry Automation Corporation ("SAIC") to handle such services for their clearinghouses.¹⁸⁶ SAIC later became the facilities manager for NSCC, which is now a clearing agency within the DTCC complex. In this regard, BSTP's staffing arrangements and reliance on affiliates are similar to Omgeo and the other registered clearing agencies within the DTCC complex. The Commission also believes that subjecting BSTP and SS&C to Regulation SCI pursuant to the conditions in this order addresses the concern about business continuity standards and is consistent with Regulation SCI's approach to exempt clearing agencies subject to ARP. The Commission also believes that whether Regulation SCI should apply to such affiliates and/or parent companies is a function of the provisions and definitions in Regulation SCI considered and adopted by the Commission.

Further, as noted elsewhere in this order,¹⁸⁷ the Commission believes that BSTP and SS&C should be held to the same regulatory requirements as Omgeo because each entity is providing the same type of service. That the DTCC complex as a whole may be subject to heightened standards for, in this case, resiliency and business continuity under Section 17A of the Exchange Act and Regulation SCI stems from, among other things, its role as holding company for three registered clearing agencies that provide CCP and CSD services.¹⁸⁸ As previously mentioned and discussed further in Part III.B.8, BSTP and SS&C, like Omgeo, are exempt clearing agencies subject to the Commission's ARP and therefore SCI entities under Regulation SCI. The Commission believes that the requirements under Regulation SCI are sufficient to help ensure that BSTP and

SS&C are held to high standards for internal controls, redundancy, security, and business continuity.

DTCC states that BLP's historic treatment of intellectual property raises concerns regarding BSTP's safeguards in this area, as well as in maintaining the privacy of users and the confidentiality of data within its databases. DTCC notes that BSTP plans to license its software, hardware, administrative, operational, and other support services from BLP, and therefore stated that the Commission should require extensive firewalls and other internal controls to prevent the misuse of clearing data obtained through BSTP's ETC and matching service.¹⁸⁹ BSTP responds that, in raising concerns about BSTP's ability to maintain privacy of users and confidentiality of data, DTCC cites to BLP's enhancement of access controls to prevent inappropriate access to BLP's client data. BSTP states that, if anything, these enhanced access controls provide added assurance that BSTP data will be held securely. BSTP notes that BLP is a preeminent data service provider, and that BLP and BSTP have information security policies and procedures in place that meet or exceed industry standards.¹⁹⁰

The Commission has evaluated the aspects of the BSTP application relating to operational risk management and internal controls. DTCC's arguments made about the prospect of confidentiality or privacy breaches are speculative and unsubstantiated by any past conduct or previous violations. The BSTP application indicates that BSTP has planned for adequate systems capacity and that it conducts stress testing. The Commission notes that BSTP and its affiliates have a business continuity management program to ensure a timely response to, and effective recovery from, unanticipated business interruptions that may affect facilities, technology, and/or people. The Commission also notes that the BSTP application indicates BSTP staff includes industry veterans knowledgeable of the marketplace and well suited to operate BSTP.

As with BSTP, the Commission has reviewed the staffing, reliance on affiliates for operational systems, internal controls, and related aspects of the SS&C application. Again, DTCC's arguments made about the prospect of confidentiality or privacy breaches are speculative and unsubstantiated by any past conduct or previous violations, and SS&C has been providing local and centralized matching facilities and ETC

services for twenty years.¹⁹¹ SSCNet is currently operating as a real time and batch-based system, so its proposed functionality under the SS&C application is not purely hypothetical. Further, as mentioned above, requiring trade data from SS&C customers to pass through Omgeo in order to arrive at DTC, as contemplated by DTCC's suggested single access model, could create conditions more favorable for confidentiality breaches than if such data was not routed through a competitor.

In addition, as discussed above, BSTP and SS&C, as SCI entities, will be subject to Regulation SCI. For example, Rule 1001(b) of Regulation SCI requires an SCI entity to have policies and procedures reasonably designed to ensure that their SCI systems operate in a manner that complies with the Exchange Act and rule and regulations thereunder and the entity's rules and governing documents, as applicable.¹⁹²

i. Cross-Border Aspects of the SS&C Application

DTCC notes that the SS&C application indicates all matching service activities will be performed by SS&C Canada. DTCC states that SS&C's reliance on a foreign subsidiary to perform critical functions distinguishes the SS&C application from the circumstances underlying, and the regulatory impact of, Omgeo's current exempt status, and raises concerns for the safety and soundness of the national clearance and settlement system.¹⁹³

On a general level, DTCC states that the Commission must satisfy itself of the following: (i) that the role of SS&C Canada would not weaken the regulatory framework applicable to SS&C's activities; and (ii) that the proposed framework in which SS&C is the regulated entity but SS&C Canada performs the actual matching function would not create a risk of disconnectedness or regulatory impairment with respect to the Commission's oversight of the national clearance and settlement system. In addition, DTCC states that the Commission should carefully scrutinize SS&C's undertakings with respect to operational, interoperability, and access matters, and its own ability to monitor the effects of SS&C's overall activities on the national system for clearance and settlement.¹⁹⁴

¹⁸⁵ See SS&C letter at 4–5.

¹⁸⁶ See *Bradford Nat'l Clearing Corp. v. SEC*, 590 F.2d 1085, 1097 (D.C. Cir. 1978).

¹⁸⁷ See, e.g., *supra* notes 110–112 and accompanying text.

¹⁸⁸ See, e.g., *supra* note 65–66 and accompanying text.

¹⁸⁹ See DTCC April letter at 18.

¹⁹⁰ See BSTP May letter at 22.

¹⁹¹ See SS&C letter at 4.

¹⁹² See *id.* at 72437–38.

¹⁹³ See DTCC September letter at 3; DTCC May letter at 10.

¹⁹⁴ See DTCC May letter at 11.

On a more specific level, DTCC states several concerns relating to choice of law, jurisdiction, privacy of information, and timely access to records.¹⁹⁵ One concern is that the Commission should require SS&C to demonstrate that applicable Canadian employment law would not impede or impair SS&C's ability to perform the undertakings provided in the SS&C application, including with respect to access to SS&C Canada employees.¹⁹⁶ DTCC also raises concerns with respect to conflicts between U.S. and Canadian privacy and securities laws and states that SS&C should be required to employ Connecticut counsel to offer its views on whether Connecticut law would interpret the Canadian privacy statutes to permit SS&C Canada to provide trade information to SS&C daily without concerns about being in violation of those statutes.¹⁹⁷ DTCC also states that SS&C needs to demonstrate that Canadian law applicable to the treatment and production of relevant data and client information would not impede or impair the production and provision of information required by regulators.¹⁹⁸

Further, DTCC states that it understands that certain activities of

SS&C Canada are regulated by the Ontario Securities Commission ("OSC") and the *Autorité des marchés financiers* ("AMF"), and therefore SS&C should demonstrate that its reliance on SS&C Canada for the purposes contemplated in the SS&C application are not in conflict or inconsistent with existing requirements under applicable Canadian provincial securities laws.¹⁹⁹ DTCC also notes that SS&C's Form 10-K indicates that SS&C has recognized that a substantial portion of its operations are conducted outside of the United States and that it is subject to a variety of related risks, including the potential difficulty to enforce third-party contractual obligations and intellectual property rights. DTCC states that the Commission should therefore require further due diligence by SS&C in this area.²⁰⁰

In addition, DTCC states that the SS&C application does not discuss any due diligence performed by SS&C with respect to SS&C Canada and SS&C Canada's capabilities in supporting SS&C or its abilities to discharge the services and obligations contemplated in the intercompany agreement.²⁰¹ In this regard, DTCC cites the IOSCO Principles on Outsourcing of Financial Services for Market Intermediaries (2005) as noting various risks related to cross-border outsourcing, for which financial institutions should conduct enhanced due diligence.²⁰² DTCC states that the Commission should require SS&C to demonstrate that it has conducted such enhanced due diligence, including the written documentation of the results of such due diligence.²⁰³

Finally, DTCC notes that, pursuant to the SS&C application, SS&C Canada will operate the matching and ETC service on behalf of SS&C. DTCC believes

operational support may be provided to an exempt clearing agency by a non-U.S. affiliate but states that the SS&C application raises issues related to such support. DTCC states, for example, that pursuant to its application, the policies and procedures of SS&C Canada are overseen by its officers and directors and subject to control by SS&C Holdings. DTCC believes that SS&C Canada's policies and operations related to matching should be overseen by SS&C itself.²⁰⁴

DTCC notes, in particular, the integral role played by SS&C Canada suggests that extra scrutiny be placed on cross-border issues to the extent they could delay or impede the proper functionality of trade matching and settlement, as previously noted above.²⁰⁵ Specifically, DTCC says that SS&C's plan to rely on SS&C Canada and other off-shore affiliates within the SS&C complex for operational performance of its matching and ETC service, along with other related services, raises concerns about SS&C's ability to appropriately protect its intellectual property and to maintain the privacy of users and confidentiality of data within its databases. DTCC says that the Commission should require extensive firewalls and other internal controls to prevent the misuse of clearing data obtained through SS&C's electronic confirmation and matching service, including the misuse of such data in providing other services within the SS&C complex.²⁰⁶

SS&C responds that the various assertions described above regarding the oversight of SS&C Canada by SS&C are unfounded and that SS&C has complete oversight of and visibility into the operations of SSCNet. SS&C further states that SS&C Canada and the SSCNet application fall under the scrutiny and review of a number of SS&C's U.S.-based executive committees providing direct oversight, including its Operating Committee, its Security Committee, and a U.S.-based internal audit department that reports to the U.S.-based Audit Committee. It also states that the SSCNet division reports to the U.S.-based Senior Vice President, Institutional and Investment Management; its development division reports to the U.S.-based Senior Vice President, Chief Development Officer; and its Information Technology Services division reports to the U.S.-based Chief Technology Officer. SS&C also notes that Omgeo operates in many

¹⁹⁵ See DTCC September letter at 3.

¹⁹⁶ See DTCC May letter at 12.

¹⁹⁷ See *id.* at 13. DTCC notes that the intercompany agreement between SS&C and SS&C Canada described in the SS&C application states that SS&C shall provide the Commission with access to information relating to SS&C Canada's matching system and electronic confirmation services, including all documents it receives from SS&C Canada. DTCC further notes that the SS&C application states that SS&C has confirmed with external counsel that implementation of the intercompany agreement would not violate the Canadian privacy statutes, which specifically are the Canadian Personal Information Protection and Electronic Document Act and the Ontario Business Records Protection Act. DTCC also states that, according to the SS&C application, because the intercompany agreement is governed by Connecticut law and SS&C's external counsel are not qualified to practice in Connecticut, SS&C has only assumed that Connecticut courts would interpret the intercompany agreement the same as the applicable Canadian courts. DTCC explains that if SS&C's external counsel were incorrect in their assumption, a Canadian customer might be able to sue SS&C to prevent SS&C Canada from providing SS&C with daily trade information, including confirmations, which would make it difficult for SS&C to oversee SS&C Canada's operations and may prevent the Commission from having ready access to trade records. See *id.*

¹⁹⁸ See *id.* DTCC says that, given the importance of this issue, the opinion of qualified legal counsel concerning whether local Ontario privacy and business record laws would be breached by the intercompany agreement seems insufficient and further due diligence is warranted. In addition, DTCC says that SS&C should address whether other Canadian law could result in the unanticipated disclosure of customer information or could provide the basis for a Canadian customer asserting that data held by SS&C Canada should not be provided to SS&C or to regulators. See *id.*

¹⁹⁹ See *id.*

²⁰⁰ See *id.* at 14.

²⁰¹ See *id.* at 11.

²⁰² See *id.* at 11–12. DTCC notes, for instance, that when considering cross-border outsourcing, the outsourcing firm should conduct enhanced due diligence that focuses on special compliance risks, including the ability to effectively monitor the foreign service provider, the ability to maintain the confidentiality of firm and customer information, and the ability to execute contingency plans and exit strategies where the service is being performed on a cross-border basis. See *id.* at 11. DTCC states that special outsourcing risks also include individual firm concentration risk and the associated exit strategy risk (e.g., over-reliance on the outsourced provider and a lack of relevant skills within SS&C itself), that concentration risk includes the potential sale of SS&C Canada by SS&C, and that access risk includes both the risk of timely access by SS&C and its auditors and regulators to data, records, or assets and conversely risk of access by SS&C Canada employees to SS&C client account data, records, and assets. See *id.* at 11–12.

²⁰³ See *id.* at 12.

²⁰⁴ See *id.* at 14.

²⁰⁵ See *id.* at 3.

²⁰⁶ See *id.* at 15.

jurisdictions outside the United States, including Canada, on the same basis.²⁰⁷

SS&C also responds that DTCC incorrectly asserts that some or all applications offered by SS&C are comingled with each other and that intellectual property, privacy of users, and confidentiality of data is lacking. SS&C states that it is a leading global data service provider that deploys information security policies, procedures, and controls that meet or exceed industry standards and that SS&C has never experienced a breach of security or privacy.

The Commission is satisfied that the cross-border aspects of the SS&C application have been sufficiently addressed without requiring denial or modification of the application. First, as described in Part II.B, the SS&C application includes a series of representations designed to ensure that the Commission can fulfill its regulatory obligations with respect to SS&C. SS&C is a U.S. person incorporated in Delaware with a Connecticut business registration that dates back to 1996. According to its application, SS&C will enter into an intercompany agreement with SS&C Canada governing the availability of information related to matching services. As a subsidiary of SS&C, SS&C Canada will be subject to the control of its parent company. Further, as described in the SS&C letter, SS&C's executive committees such as the Operating Committee and the Security Committee provide direct oversight of SSCNet.²⁰⁸ The Commission believes that control of SS&C Canada by a U.S. parent and the contractual arrangements outlined in SS&C's application are sufficient to allow the Commission to exercise oversight of SS&C consistent with the Exchange Act.

Second, the Commission has entered into a memorandum of understanding concerning consultation, cooperation, and the exchange of information related to the supervision of cross-border regulated entities with the AMF and the OSC. The MOU notes that it is intended to express each authority's willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of investor protection, fostering the integrity of and maintaining confidence in the capital markets, and reducing systemic risk.²⁰⁹

More generally, as previously discussed, the Commission is familiar with arrangements whereby a registered entity contracts out functions to other entities that may or may not be directly regulated by the Commission, and may or may not be located within the U.S. In the absence of a concrete obstacle—for example, a specific foreign statute blocking access currently in effect, or a history of instances of non-compliance by an entity—DTCC's arguments about cross-border risks depend on purely speculative concerns. For example, such prospects are not grounded in a particular fact pattern identified by DTCC or other commenters, and do not demonstrate that SS&C is hindered in its ability to comply with the conditions below.

Finally, we note that as with the Omgeo order, this order includes provisions for modification if necessary or appropriate in the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.²¹⁰ The Commission may also limit, suspend, or revoke this exemption if it finds that SS&C has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.²¹¹ Thus, should concerns about SS&C arise in the future, the Commission retains sufficient tools to ensure that SS&C acts consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

6. Governance of BSTP

DTCC states that the composition of BSTP's board of directors as described in the BSTP application raises concerns about the overlap between BSTP and its for-profit parent BLP because only one of the board's four members is an industry representative, which could compromise BSTP's independence from BLP and the extent to which BSTP is capable of playing a neutral role as an industry utility.²¹²

According to BSTP, while BSTP's parent, BLP, will provide BSTP with software, hardware, administrative, operational, and other support services, BSTP has established a separate board of directors to oversee its operations and will hold ultimate legal responsibility

over its operations.²¹³ BSTP states that its governance arrangements are designed to help ensure that BSTP will be operated in a manner that is consistent with the public interest and the protection of investors by establishing specific governance principles and fitness standards for qualification of each member of the board of directors.²¹⁴ BSTP also states that it intends to establish an advisory board consisting of industry members and users of BSTP, including representatives from broker-dealers, investment managers, and custodians, and that it intends to continue engaging with the securities industry and market participants as a further means of ensuring that BSTP operates in a manner that is consistent with the public interest and the protection of investors.²¹⁵

The Commission is mindful of DTCC's concerns but disagrees. As BSTP notes, DTCC provides no support from the Omgeo order that matching service providers be non-profit entities or that for-profit entities be subject to special controls by virtue of that status.²¹⁶ Omgeo itself was 49.9-percent owned by a for-profit entity at its formation.²¹⁷ The Commission recognizes that, as originally conceived, five of nine voting managers on Omgeo's board of managers were industry representatives,²¹⁸ which reflects a higher ratio of industry representatives than BSTP's board of directors. The Commission also notes that BSTP has represented that it will make efforts to incorporate industry representatives into BSTP's decision-making process. Specifically, the Commission believes that the advisory board would provide useful industry input into the decisions made by BSTP's board of directors. In addition, the Commission believes that BSTP's proposed industry working group will help ensure that the users of BSTP's matching service will have significant input into BSTP's service offerings and operations. Further, as with the Omgeo order and as noted above with respect to SS&C, this order includes provisions for modification if necessary or appropriate in the public interest, the protection of investors, or

²¹³ See BSTP May letter at 20.

²¹⁴ See *id.*

²¹⁵ See *id.* at 20–21. Specifically, BSTP stated that, in designing BSTP's matching service, BSTP met with over 30 investment managers, created and obtained input from two working groups (one comprised of representatives from seven industry-leading custodians and one comprised of representatives from fifteen prominent broker-dealers). See *id.* at 20 n.62.

²¹⁶ See *id.* at 19.

²¹⁷ See Omgeo order, *supra* note 37, at 20495.

²¹⁸ See *id.*

²⁰⁷ See SS&C letter at 4.

²⁰⁸ See SS&C letter at 4.

²⁰⁹ See Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Regulated Entities, Sept. 2011,

available at http://www.sec.gov/about/offices/oia/oia_bilateral/canada_regcoop.pdf.

²¹⁰ See *infra* Parts IV.A.3 (for BSTP) and IV.B.3 (for SS&C).

²¹¹ See *id.*

²¹² See DTCC April letter at 17.

otherwise in furtherance of the purposes of the Exchange Act. The Commission may also limit, suspend, or revoke this exemption if it finds that BSTP has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Thus, should concerns about BSTP arise in the future, the Commission retains sufficient tools to ensure that BSTP acts consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

DTCC additionally states that BSTP should be subject to stricter corporate governance controls similar to those imposed on Omgeo, and that BSTP's board should be required to maintain fair representation of its ETC and matching service customers.²¹⁹ The Commission disagrees and continues to believe that an entity such as BSTP that limits its clearing agency functions only to providing matching services need not be subject to the full panoply of clearing agency regulation.²²⁰ This includes the requirement that the rules of the clearing agency assure a fair representation of its shareholders and participants in the selection of its directors.²²¹

In response to DTCC's suggestion that Omgeo is subject to heightened governance requirements, the Commission believes it is appropriate to highlight several reasons for the various legal and other regulatory requirements to which the entities within the DTCC complex are subject, as follows. First, Omgeo is an exempt clearing agency subject to the terms and conditions of the Omgeo order. Second, DTC, by contrast, is a registered clearing agency subject to the full panoply of clearing agency regulation. Accordingly, when the Commission approved transfer of the TradeSuite ID system from DTC to Omgeo, it highlighted the statutory requirement that DTC provide equitable allocation of dues, fees, and other charges among its participants and refrain from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of Section 17A of the Exchange Act.²²² These requirements are obligations of DTC, not Omgeo, and the Commission finds no basis for

imposing obligations on BSTP and SS&C that have not been imposed on Omgeo.

7. Interoperability Among Matching Service Providers

i. Sufficiency of the Interoperability Conditions

Several commenters expressed views on the need for interoperability to ensure that a market structure with multiple matching service providers can facilitate the anticipated benefits described above. Specifically, four commenters emphasized the importance of facilitating interoperability between matching services. Two commenters stated that interoperability is vital to ensure that industry participants may choose their service providers free of any dependency and to support use by the full spectrum of potential users.²²³ Another similarly stated that interoperability must be mandatory given the number of institutions active in this space while also noting that it may result in increased implementation costs to current and future matching services.²²⁴ A fourth stated that, in its experience connecting to securities and derivatives clearing and settlement services globally, fair and open approaches have been valuable in encouraging continued investments by market participants and vendors, reinforcing the cycle of innovation and meaningful cost reduction in global markets.²²⁵ Two commenters further stated that the conditions proposed in the BSTP notice, which are the same as those proposed in the SS&C notice (and substantially the same as those contained in the Omgeo order),²²⁶ were appropriate and adequate to facilitate interoperability and regulatory oversight.²²⁷

The Commission agrees that interoperability among matching service providers is critical to facilitating the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. In 2001, the Commission issued the Omgeo order mindful of concerns about interoperability. Accordingly, the Omgeo order included interoperability conditions designed to address concerns that, as the sole provider of matching services, Omgeo could improperly gain a monopoly in post-trade processing.²²⁸ The interoperability conditions were

designed to address these competition concerns and help ensure that Omgeo's exemption was consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.²²⁹ In particular, the Commission notes that the conditions set forth in the Omgeo order help facilitate the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions, ensure choice among service providers, reduce costs to the users of matching service providers, and facilitate the entry of new matching service providers that might encourage innovation in the provision of matching services.

The Commission is satisfied that the BSTP and SS&C applications, which include substantially the same interoperability provisions as those set forth in the Omgeo order, will continue to facilitate these same goals. The Commission notes that both BSTP and SS&C expressed support for interoperability in their comment letters,²³⁰ and that BSTP and SS&C also state that their applications will promote linkages and standardization, consistent with Section 17A(a)(1)(D) of the Exchange Act.²³¹ Specifically, SS&C states that it has a long history of linking with upstream accounting and order management systems used by institutional customers, service bureaus used by broker-dealers, and direct linkages into custodian platforms for those banks directly on its platform. It has also created interfaces with services that are seen as competitors such as SWIFT, SCRL, FX matching platforms, and vendors offering local matching engines. SS&C states it was also a charter member of ISITC North America (then the Financial Models Company) and that the promotion of standards and interoperability has long been a cornerstone of the company's philosophy.²³² Similarly, BSTP states that it will use industry standard communication protocols (e.g., TCP/IP, SNA) and message and file transfer protocols (e.g., FIX, WebSphere MQ), as well as support the FIX global post-trade processing guidelines. BSTP states that, as a result, it will be able to accept a market participant's preferred means of

²²⁹ See *id.* at 20498.

²³⁰ See BSTP May letter at 4 (citing interoperability as one way in which the BSTP application promotes standards and linkages consistent with Section 17A of the Exchange Act); SS&C letter at 3 (stating that the promotion of uniform standards and interoperability have long been cornerstones of SS&C's company philosophy).

²³¹ See BSTP May letter at 4; SS&C letter at 2–3; see also 15 U.S.C. 78q–1(a)(1)(D).

²³² See SS&C letter at 3.

²¹⁹ See DTCC April letter at 17; Cornerstone Report at 29.

²²⁰ See Matching Release, *supra* note 13, at 17947.

²²¹ See 15 U.S.C. 78q–1(b)(3)(C).

²²² See Omgeo order, *supra* note 37, at 20498 n.39.

²²³ See Citi at 2; Fidessa.

²²⁴ See Northern Trust.

²²⁵ See Traiana.

²²⁶ See generally Omgeo order, *supra* note 37.

²²⁷ See SIFMA AMF at 1–3; Northern Trust.

²²⁸ See Omgeo order, *supra* note 37, at 20496–97, 20498.

sending and receiving data, thereby minimizing the development cost needed to use BSTP's matching service.²³³

ii. Timeframes for Building and Operating Interfaces

DTCC states that the timeframes for building and operating interfaces, as set forth in the Omgeo order and included for BSTP and SS&C as part of this order, do not take into account the amount and complexity of the work that would need to be done to accommodate BSTP and/or SS&C's entry into the market structure for matching services and likely would be insufficient to enable the operational accuracy and reliability for the proper operation of an interface.²³⁴ DTCC states that it would need to analyze requirements for and provide interoperability specifications to BSTP and/or SS&C to facilitate the formation of an interface, but such specifications cannot be determined until a functioning interface has been designed, developed, and tested.²³⁵ DTCC further states that because functionality related to central matching interoperability does not currently exist within Omgeo or elsewhere within DTCC, DTCC would need to analyze its existing systems to ensure those systems, processes, and workflows would not be compromised by connecting to BSTP and/or SS&C.²³⁶ DTCC indicates that the functionality to be considered would include, among others, (i) matching rules, (ii) reconciliation routines, (iii) exception management, (iv) control number assignments, and (v) account matter file requirements.²³⁷

DTCC further states that because it does not know the nature of the BSTP and/or SS&C systems, if any, and whether or on what terms BSTP and/or SS&C might be eligible for an exemption from the Commission, it would be unreasonable to expect DTCC to devote resources to such issues until it has sufficient certainty about the nature of the interfaces that would need to be developed, if any.²³⁸ DTCC also notes that additional time would also be needed if multiple matching service providers are simultaneously developing interfaces with each other, adding another layer of complexity that

would need to be addressed in a risk-mitigating manner.²³⁹

BSTP responds that there is no justification to delay interoperability of Omgeo with other matching services. BSTP notes that, in the fourteen years since the Commission issued the Omgeo order, neither DTCC nor Omgeo has raised any concerns regarding the terms of that exemption. BSTP notes that the need for DTCC and its subsidiaries to devote resources to comply with the conditions in the Omgeo order is not a valid reason to modify the provisions found in the Omgeo order.²⁴⁰ Further, BSTP notes that technological improvements since 2001 have increased the ease of establishing safe and secure communication links, suggesting that technological developments do not support modifying or extending the timeframes in the Omgeo order.²⁴¹

SS&C acknowledges that there could be other appropriate timeframes for building and operating interfaces, and SS&C also states that the interoperability conditions contained within the Omgeo order already provide the means for extending those timeframes. SS&C further states that the conditions proposed in the SS&C notice (the same as those contained in the Omgeo order) provide the appropriate mechanisms to allow parties to extend the timeframes, and accordingly SS&C sees no issue with the conditions proposed in the SS&C notice as they relate to timeframes for building and operating interfaces.²⁴² The Commission agrees with SS&C's observations inasmuch as interoperability condition (6), which appears in the Omgeo order and is applied to BSTP and SS&C below,²⁴³ gives each matching service provider the flexibility to negotiate and determine appropriate timeframes beyond what the orders prescribe, as well as specified channels for appropriate resolution of disputes in certain instances.

Further, the Commission is mindful that Omgeo, BSTP, and SS&C will need time to develop the appropriate interfaces to ensure that their systems are interoperable consistent with the conditions set forth in the Omgeo order and this order below. The Commission agrees with SS&C that, while other timeframes may also be appropriate to build and operate interfaces, the

interoperability conditions provide a mechanism for extending time on which the parties must agree, mitigating the concerns raised by DTCC. Indeed, the conditions help ensure that no one party can unnecessarily delay the process of building and operating interfaces for interoperability. In that regard, to the extent that DTCC was hesitant to devote resources to building and operating interfaces with other matching service providers because of questions as to whether and on what terms BSTP and SS&C would be eligible for an exemption to provide matching services, those questions are fully resolved in this order.

8. Application of Regulation SCI to Exempt Clearing Agencies

DTCC requests that the Commission clarify whether and to what extent Regulation SCI has superseded reporting requirements for system outages and other events in the Omgeo order. Specifically, DTCC notes that Rule 1003(a) of Regulation SCI requires SCI entities to report material system changes, including submitting to the Commission a report within thirty calendar days after the end of each calendar quarter describing completed, ongoing, and planned material changes to SCI systems and the security of indirect SCI systems.²⁴⁴ DTCC requests clarification of the relationship between this requirement and the requirement in operational condition (4) of the Omgeo order requiring Omgeo to provide twenty-days advance notice of material system changes to the Commission.²⁴⁵

On November 19, 2014, the Commission adopted Regulation SCI, which requires SCI entities to comply with requirements for policies and procedures with respect to their automated systems that support the performance of their regulated activities.²⁴⁶ Regulation SCI became effective on February 3, 2015, and, with some exceptions, the compliance date

²⁴⁴ Rule 1003(a)(1) requires an SCI entity to provide quarterly reports to the Commission, describing completed, ongoing, and planned material systems changes to its SCI systems and the security of indirect SCI systems, during the prior, current, and subsequent calendar quarters. Rule 1003(a)(1) also requires an SCI entity to establish reasonable written criteria for identifying a change to its SCI systems and the security of its indirect SCI systems as material.

In addition Rule 1003(a)(2) requires an SCI entity to promptly submit a supplemental report to notify the Commission of a material error in or material omission from a previously submitted report. See 17 CFR 242.1003.

²⁴⁵ See *id.* at 17–18 & n.43; DTCC April letter at 22 & n.69.

²⁴⁶ See Regulation SCI, *supra* note 70, at 72271.

²³³ See BSTP May letter at 4.

²³⁴ See DTCC September letter at 2; DTCC June letter at 4; DTCC April letter at 15.

²³⁵ See DTCC April letter at 15.

²³⁶ See *id.* at 15–16.

²³⁷ See *id.* at 16.

²³⁸ See DTCC June letter at 4; DTCC May letter at 10; DTCC April letter at 15–16.

²³⁹ See DTCC May letter at 10.

²⁴⁰ See BSTP May letter at 17–18; BSTP August letter at 6.

²⁴¹ See BSTP May letter at 11.

²⁴² See SS&C letter at 4.

²⁴³ See Omgeo order, *supra* note 37, at 20499; *infra* Parts IV.A.2.ii (for BSTP) and IV.B.2.ii (for SS&C).

was November 3, 2015.²⁴⁷ In relevant part, Rule 1000 of Regulation SCI defines an SCI entity to include, among other things, a registered clearing agency and an exempt clearing agency subject to ARP.²⁴⁸ In particular, the term “exempt clearing agency subject to ARP” includes an entity that has received from the Commission an exemption from registration as a clearing agency under Section 17A of the Exchange Act, and whose exemption contains conditions that relate to the Commission’s ARP Policies, or any Commission regulation that supersedes or replaces such policies.²⁴⁹ As set forth below, operational condition (1) to this order requires an audit report that addresses all areas discussed in ARP.²⁵⁰ Accordingly, BSTP and SS&C are each an exempt clearing agency subject to ARP and therefore SCI entities subject to Regulation SCI. Because the Omgeo order contains the same condition,²⁵¹ it also is an exempt clearing agency subject to ARP and therefore an SCI entity subject to Regulation SCI.

In response to DTCC’s comment, the Commission notes that operational condition (4) was not a component of the ARP policy statements and therefore has not been superseded by Regulation SCI. Operational condition (4) ensures that the Commission receives 20-days advance notice of systems changes, which the Commission believes is necessary for matching service providers in light of the potential for linkages between matching service providers and the corresponding need for matching service providers to maintain interoperability pursuant to the interoperability conditions of the Omgeo order and this order.²⁵² Because the ARP policy statements did not explicitly contemplate advance notice of material systems changes, the requirement in operational condition (4) has not been superseded. In light of the similarity between the requirements in operational condition (4) and Rule 1003(a) of Regulation SCI, however, if any matching service provider believes that operational condition (4) should be modified or removed, the proper mechanism for modifying the condition is to file an amendment to the matching service provider’s Form CA–1. The Commission notes that operational

condition (4) is applied to both BSTP and SS&C below.²⁵³

In addition, because Regulation SCI has superseded the requirements in ARP, the Commission is providing clarification as to the requirements in operational conditions (1) and (2), which appear in the Omgeo order and are applied to BSTP and SS&C below.²⁵⁴ Operational condition (1) states that before beginning the commercial operation of its matching service, an exempt clearing agency shall provide the Commission with an audit report that addresses all the areas discussed in the Commission’s ARP. Operational condition (2) states, in relevant part, that an exempt clearing agency shall provide the Commission with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in ARP and that an exempt clearing agency shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel. The Commission finds that Rule 1003(b) of Regulation SCI has superseded these requirements.²⁵⁵ Accordingly, pursuant to operational condition (1), BSTP and SS&C are required to submit an annual SCI review prior to beginning the commercial operation of their matching services. Pursuant to operational condition (2), Omgeo, BSTP, and SS&C, as SCI entities, are each required to submit an annual SCI review each calendar year consistent with Regulation SCI.

²⁵³ See *infra* Parts IV.A.2.i (for BSTP) and IV.B.2.i (for SS&C).

²⁵⁴ See *id.*; Omgeo order, *supra* note 37, at 20498.

²⁵⁵ See Regulation SCI, *supra* note 70, at 72439. Rule 1003(b)(1) of Regulation SCI requires an SCI entity to conduct an “SCI review” of the SCI entity’s compliance with Regulation SCI not less than once per calendar year. An SCI review must contain (i) a risk assessment with respect to an SCI entity’s SCI systems and indirect SCI systems, and (ii) an assessment of internal control design and effectiveness of such systems to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards.

Pursuant to Rule 1003(b)(2), an SCI entity must submit a report of the SCI review to senior management of the SCI entity for review no more than 30 calendar days after completion of such a review. Moreover, under Rule 1003(b)(3), an SCI entity must submit to the Commission, and to the board of directors of the SCI entity or the equivalent of such board, a report of the SCI review and any response by senior management within 60 calendar days after its submission to senior management.

IV. Evaluation of the Applications

A. BSTP

In evaluating the BSTP application, the Commission has been guided by the requirements of Section 17A of the Exchange Act. Among other factors, the Commission has considered BSTP’s risk management procedures, operational capacity and safeguards, organizational structure, and ability to operate in a manner that will satisfy the fundamental goals of Section 17A. The Commission has also carefully considered the comments received in response to the BSTP application, as discussed above. The Commission believes that the BSTP application supports the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions.

Accordingly, for the reasons discussed throughout this order, the Commission finds that the BSTP application, including the terms and conditions set forth in the application and reproduced below, is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act, and that BSTP is so organized and has the capacity to be able to facilitate prompt and accurate matching services.

Below are the terms and conditions of BSTP’s exemption.

1. Scope of Exemption

This order grants BSTP an exemption from registration as a clearing agency under Section 17A of the Exchange Act to provide an ETC and matching service. The exemption is granted subject to conditions that the Commission believes are necessary and appropriate in light of the statutory requirements of Section 17A.²⁵⁶ This order and the conditions and limitations contained in it are consistent with the Commission’s statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulation.

2. Conditions of Exemption

The Commission is including specific conditions to this exemption designed to facilitate the establishment of a national system for the prompt and

²⁴⁷ See *id.* at 72366.

²⁴⁸ See Regulation SCI, *supra* note 70, at 72437.

²⁴⁹ See *id.* at 72271.

²⁵⁰ See *infra* Part IV.A.2.i (for BSTP) and Part IV.B.2.i (for SS&C).

²⁵¹ See Omgeo order, *supra* note 37, at 20498.

²⁵² See *id.*

²⁵⁶ The Commission is granting BSTP an exemption from clearing agency registration, so it will not be considered a self-regulatory organization under Section 3(a)(26) and therefore will not be required to file rule changes in accordance with Section 19(b) of the Exchange Act. The Commission is also not imposing a rule change filing requirement as a condition of the exemption.

accurate clearance and settlement of securities transactions and the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. The conditions are designed to promote competition, transparency, consistency, and interoperability in the market for matching services.

i. Operational Conditions

(1) Before beginning the commercial operation of its matching service, BSTP shall provide the Commission with an audit report that addresses all the areas discussed in the Commission's Automation Review Policies ("ARP").²⁵⁷

(2) BSTP shall provide the Commission with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARP. BSTP shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel.

(3) BSTP shall report all significant systems outages to the Commission. If it appears that the outage may extend for thirty minutes or longer, BSTP shall report the systems outage immediately. If it appears that the outage will be resolved in less than thirty minutes, BSTP shall report the systems outage within a reasonable time after the outage has been resolved.

(4) BSTP shall provide the Commission with 20 business days advance notice of any material changes that BSTP makes to the matching service or ETC service. These changes will not require the Commission's approval before they are implemented.

(5) BSTP shall respond and require its service providers (including BLP) to respond to requests from the Commission for additional information relating to the matching service and ETC service, and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service and the ETC service. The requests for

information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions in any exemptive order issued by the Commission with respect to BSTP's matching service and the ETC service.

(6) BSTP shall supply the Commission or its designee with periodic reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its matching service and ETC service.

(7) BSTP shall preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, service agreements, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its matching service and ETC service. BSTP shall retain these records for a period of not less than five years, the first two years in an easily accessible place.

(8) BSTP shall not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted in an exemption issued by the Commission.

(9) Before beginning the commercial operation of its matching service, BSTP shall provide the Commission with copies of the service agreement between BLP and BSTP and shall notify the Commission of any material changes to the service agreement.

ii. Interoperability Conditions

(1) BSTP shall develop, in a timely and efficient manner, fair and reasonable linkages between BSTP's matching service and other matching services that are registered with the Commission or that receive or have received from the Commission an exemption from clearing agency registration that, at a minimum, allow parties to trades that are processed through one or more matching services to communicate through one or more appropriate effective interfaces with other matching services.

(2) BSTP shall devise and develop interfaces with other matching services that enable end-user clients or any service that represents end-user clients to BSTP ("end-user representative") to gain a single point of access to BSTP and other matching services. Such interfaces must link with each other

matching service so that an end-user client of one matching service can communicate with all end-user clients of all matching services, regardless of which matching service completes trade matching prior to settlement.

(3) If any intellectual property proprietary to BSTP is necessary to develop, build, and operate links or interfaces to BSTP's matching service, as described in these conditions, BSTP shall license such intellectual property to other matching services seeking linkage to BSTP on fair and reasonable terms for use in such links or interfaces.

(4) BSTP shall not engage in any activity inconsistent with the purposes of Section 17A(a)(2) of the Exchange Act,²⁵⁸ which section seeks the establishment of linked or coordinated facilities for clearance and settlement of transactions. In particular, BSTP will not engage in activities that would prevent any other matching service from operating a matching service that it has developed independently from BSTP's matching service.

(5) BSTP shall support industry standards in each of the following categories: communication protocols (e.g., TCP/IP, SNA); message and file transfer protocols and software (e.g., FIX, WebSphere MQ, SWIFT); message format standards (e.g., FIX); and message languages and metadata (e.g., XML). However, BSTP need not support all existing industry standards or those listed above by means of example. Within three months of regulatory approval, BSTP shall make publicly known those standards supported by BSTP's matching service. To the extent that BSTP decides to support other industry standards, including new and modified standards, BSTP shall make these standards publicly known upon making such decision or within three months of updating its system to support such new standards, whichever is sooner. Any translation to/from these published standards necessary to communicate with BSTP's system shall be performed by BSTP without any significant delay or service degradation of the linked parties' services.

(6) BSTP shall make all reasonable efforts to link with each other matching service in a timely and efficient manner, as specified below. Upon written request, BSTP shall negotiate with each other matching service to develop and build an interface that allows the two to link matching services ("interface"). BSTP shall involve neutral industry participants in all negotiations to build or develop interfaces and, to the extent feasible, incorporate input from such

²⁵⁷ See Exchange Act Release Nos. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) ("ARP I"), and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) ("ARP II"); see also Memorandum from the Securities and Exchange Commission Division of Market Regulation to SROs and NASDAQ (June 1, 2001) ("Guidance for Systems Outages and System Change Notifications"), available at <http://www.sec.gov/divisions/marketreg/sro-guidance-for-systems-outage-06-01-2001.pdf>.

²⁵⁸ 15 U.S.C. 78q-1(a)(2)(A)(ii).

participants in determining the specifications and architecture of such interfaces. Absent adequate business or technological justification,²⁵⁹ BSTP and the requesting other matching service shall conclude negotiations and reach a binding agreement to develop and build an interface within 120 calendar days of BSTP's receipt of the written request. This 120-day period may be extended upon the written agreement of both BSTP and the other matching service engaged in negotiations. For each other matching service with whom BSTP reaches a binding agreement to develop and build an interface, BSTP shall begin operating such interface within 90 days of reaching a binding agreement and receiving all the information necessary to develop and operate it. This 90-day period may be extended upon the written agreement of both BSTP and the other matching service. For each interface and within the same time BSTP must negotiate and begin operating each interface, BSTP and the other matching service shall agree to "commercial rules" for coordinating the provision of matching services through their respective interfaces, including commercial rules: (A) Allocating responsibility for performing matching services; and (B) allocating liability for service failures. BSTP shall also involve neutral industry participants in negotiating applicable commercial rules and, to the extent feasible, take input from such participants into account in agreeing to commercial rules. At a minimum, each interface shall enable BSTP and the other matching service to transfer between them all trade and account information necessary to fulfill their respective matching responsibilities as set forth in their commercial rules ("trade and account information"). Absent an adequate business or technological justification, BSTP shall develop and operate each interface without imposing conditions that negatively impact the other matching service's ability to innovate its matching service or develop and offer other value-added services relating to its matching service or that negatively impact the other matching service's ability to compete effectively against BSTP.

(7) In order to facilitate fair and reasonable linkages between BSTP and other matching services, BSTP shall publish or make available to any other matching service the specifications for

any interface and its corresponding commercial rules that are in operation within 20 days of receiving a request for such specifications and commercial rules. Such specifications shall contain all the information necessary to enable any other matching services not already linked to BSTP through an interface to establish a linkage with BSTP through an interface or a substantially similar interface. BSTP shall link to any other matching service, if the other matching service so opts, through an interface substantially similar to any interface and its corresponding commercial rules that BSTP is currently operating. BSTP shall begin operating such substantially similar interface and commercial rules with the other matching service within 90 days of receiving all the information necessary to operate that link. This 90-day period may be extended upon the written agreement of both BSTP and the other matching service that plans to use that link.

(8) BSTP and respective other matching services shall bear their own costs of building and maintaining an interface, unless otherwise negotiated by the parties.

(9) BSTP shall provide to all other matching services and end-user representatives that maintain linkages with BSTP sufficient advance notice of any material changes, updates, or revisions to its interfaces to allow all parties who link to BSTP through affected interfaces to modify their systems as necessary and avoid system downtime, interruption, or system degradation.

(10) BSTP and each other matching service shall negotiate fair and reasonable charges and terms of payment for the use of their interface with respect to the sharing of trade and account information ("interface charges"). In any fee schedule adopted under conditions A.2.ii(10), A.2.ii(11), or A.2.ii(12) herein, BSTP's interface charges shall be equal to the interface charges of the respective other matching service.

(11) If BSTP and the other matching service cannot reach agreement on fair and reasonable interface charges within 60 days of receipt of the written request, BSTP and the other matching service shall submit to binding arbitration under the rules promulgated by the American Arbitration Association. The arbitration panel shall have 60 days to establish a fee schedule. The arbitration panel's establishment of a fee schedule shall be binding on BSTP and the other matching service unless and until the fee schedule is subsequently modified or abrogated by the Commission or

BSTP and the other matching service mutually agree to renegotiate.

(12)(A) The following parameters shall be considered in determining fair and reasonable interface charges: (i) The variable cost incurred for forwarding trade and account information to other matching services; (ii) the average cost associated with the development of links to end-users and end-user representatives; and (iii) BSTP's interface charges to other matching services. (B) The following factors shall not be considered in determining fair and reasonable interface charges: (i) The respective cost incurred by BSTP or the other matching service in creating and maintaining interfaces; (ii) the value that BSTP or the other matching service contributes to the relationship; (iii) the opportunity cost associated with the loss of profits to BSTP that may result from competition from other matching services; (iv) the cost of building, maintaining, or upgrading BSTP's matching service; or (v) the cost of building, maintaining, or upgrading value added services to BSTP's matching service. (C) In any event, the interface charges shall not be set at a level that unreasonably deters entry or otherwise diminishes price or non-price competition with BSTP by other matching services.

(13) BSTP shall not charge its customers more for use of its matching service when one or more counterparties are customers of other matching services than BSTP charges its customers for use of its matching service when all counterparties are customers of BSTP. BSTP shall not charge customers any additional amount for forwarding to or receiving trade and account information from other matching services called for under applicable commercial rules.

(14) BSTP shall maintain its quality, capacity, and service levels in the interfaces with other matching services ("matching services linkages") without bias in performance relative to similar transactions processed completely within BSTP's service. BSTP shall preserve and maintain all raw data and records necessary to prepare reports tabulating separately the processing and response times on a trade-by-trade basis for (A) completing its matching service when all counterparties are customers of BSTP; (B) completing its matching service when one or more counterparties are customers of other matching services; or (C) forwarding trade information to other matching services called for under applicable commercial rules. BSTP shall retain the data and records for a period not less than six years. Sufficient information

²⁵⁹ The failure of neutral industry participants to be available or to submit their input within the 120 day or 90 day time periods set forth in this paragraph shall not constitute an adequate business or technological justification for failing to adhere to the requirements set forth in this paragraph.

shall be maintained to demonstrate that the requirements of condition A.2.ii(15) below are being met. BSTP and its service providers shall provide the Commission with reports regarding the time it takes BSTP to process trades and forward information under various circumstances within thirty days of the Commission's request for such reports. However, BSTP shall not be responsible for identifying the specific cause of any delay in performing its matching service where the fault for such delay is not attributable to BSTP.

(15) BSTP shall process trades or facilitate the processing of trades by other matching services on a first-in-time priority basis. For example, if BSTP receives trade and account information that BSTP is required to forward to other matching services under applicable commercial rules ("pass-through information") prior to receiving trade and account information from BSTP's customers necessary to provide matching services for a trade in which all parties are customers of BSTP ("intra-hub information"), BSTP shall forward the pass-through information to the designated other matching service prior to processing the intra-hub information. If, on the other hand, the information were to come in the reverse order, BSTP shall process the intra-hub information before forwarding the pass-through information.

(16) BSTP shall sell access to its databases, systems or methodologies for transmitting settlement instructions (including settlement instructions from investment managers, broker-dealers, and custodian banks) and/or transmitting trade and account information to and receiving authorization responses from settlement agents on fair and reasonable terms to other matching services and end-user representatives. Such access shall permit other matching services and end-user representatives to draw information from those databases, systems, and methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents for use in their own matching services or end-user representatives' services. The links necessary for other matching services and end-user representatives to access BSTP's databases, systems or methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents will comply with conditions A.2.ii(3), A.2.ii(5), A.2.ii(9), A.2.ii(14) and A.2.ii(15) above.

(17) For the first five years from the date of an exemptive order issued by the Commission with respect to BSTP's matching service, BSTP shall provide the Commission with reports every six months sufficient to document BSTP's adherence to the obligations relating to interfaces set forth in conditions A.2.ii(6) through A.2.ii(13) and A.2.ii(16) above. BSTP shall incorporate into such reports information including but not limited to: (A) All other matching services linked to BSTP; (B) the time, effort, and cost required to establish each link between BSTP and other matching services; (C) any proposed links between BSTP and other matching services as well as the status of such proposed links; (D) any failure or inability to establish such proposed links or fee schedules for interface charges; (E) any written complaint received from other matching services relating to its established or proposed links with BSTP; and (F) if BSTP failed to adhere to any of the obligations relating to interfaces set forth in conditions A.2.ii(6) through A.2.ii(13) and A.2.ii(16) above, its explanation for such failure. The Commission shall treat information submitted in accordance with this condition as confidential, non-public information, subject to the provisions of applicable law. If any other matching service seeks to link with BSTP more than five years after issuance of an exemptive order issued by the Commission with respect to BSTP's matching service, BSTP shall notify the Commission of the other matching service's request to link with BSTP within ten days of receiving such request. In addition, BSTP shall provide reports to the Commission in accordance with this paragraph commencing six months after the initial request for linkage is made until one year after BSTP and the other matching service begin operating their interface. The Commission reserves the right to request reports from BSTP at any time. BSTP shall provide the Commission with such updated reports within thirty days of the Commission's request.

(18) BSTP shall also publish or make available upon request to any end-user representative the necessary specifications, protocols, and architecture of any interface created by BSTP for any end-user representative.

3. Modifications to Exemption

BSTP is required to file with the Commission amendments to its application for exemption on Form CA-1 if it makes any material change affecting its ETC or matching service—as summarized in this order, in its Form CA-1 dated March 15, 2013, or in any

subsequently filed amendments to its Form CA-1—that would make such previously provided information incomplete or inaccurate.

In addition, the Commission may modify by order the terms, scope, or conditions of BSTP's exemption from registration as a clearing agency if it determines that such modification is necessary or appropriate in the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Furthermore, the Commission may limit, suspend, or revoke this exemption if it finds that BSTP has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

B. SS&C

In evaluating the SS&C application, the Commission has been guided by the requirements of Section 17A of the Exchange Act. Among other factors, the Commission has considered SS&C's risk management procedures, operational capacity and safeguards, organizational structure, and ability to operate in a manner that will satisfy the fundamental goals of Section 17A. The Commission has also carefully considered the comments received in response to the SS&C application, as discussed above. The Commission believes that the SS&C application supports the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions.

Accordingly, for the reasons discussed throughout this order, the Commission finds that the SS&C application, including the terms and conditions set forth in the application and reproduced below, is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act, and that SS&C is so organized and has the capacity to be able to facilitate prompt and accurate matching services.

Below are the terms and conditions of SS&C's exemption.

1. Scope of Exemption

This order grants SS&C an exemption from registration as a clearing agency under Section 17A of the Exchange Act to provide an ETC and matching service. The exemption is granted subject to conditions that the Commission believes are necessary and appropriate in light of the statutory requirements of Section

17A.²⁶⁰ This order and the conditions and limitations contained in it are consistent with the Commission's statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulation.

2. Conditions of Exemption

The Commission is including specific conditions to this exemption designed to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. The conditions are designed to promote competition, transparency, consistency, and interoperability in the market for matching services.

i. Operational Conditions

(1) Before beginning the commercial operation of its matching service, SS&C shall provide the Commission with an audit report that addresses all the areas discussed in the Commission's Automation Review Policies ("ARP").²⁶¹

(2) SS&C shall provide the Commission with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARP. SS&C shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel.

(3) SS&C shall report all significant systems outages to the Commission. If it appears that the outage may extend for thirty minutes or longer, SS&C shall report the systems outage immediately. If it appears that the outage will be resolved in less than thirty minutes,

SS&C shall report the systems outage within a reasonable time after the outage has been resolved.

(4) SS&C shall provide the Commission with 20 business days advance notice of any material changes that SS&C makes to the matching service or ETC service. These changes will not require the Commission's approval before they are implemented.

(5) SS&C shall respond and require its service providers to respond to requests from the Commission for additional information relating to the matching service and ETC service, and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service and the ETC service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions in any exemptive order issued by the Commission with respect to SS&C's matching service and the ETC service.

(6) SS&C shall supply the Commission or its designee with periodic reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its matching service and ETC service.

(7) SS&C shall preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, service agreements, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its matching service and ETC service. SS&C shall retain these records for a period of not less than five years, the first two years in an easily accessible place.

(8) SS&C shall not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted in an exemption issued by the Commission.

(9) Before beginning the commercial operation of its matching service, SS&C shall provide the Commission with copies of the intercompany agreement between SS&C and SS&C Canada and shall notify the Commission of any material changes to the service agreement.

ii. Interoperability Conditions

(1) SS&C shall develop, in a timely and efficient manner, fair and reasonable linkages between SS&C's matching service and other matching services that are registered with the Commission or that receive or have received from the Commission an exemption from clearing agency registration that, at a minimum, allow parties to trades that are processed through one or more matching services to communicate through one or more appropriate effective interfaces with other matching services.

(2) SS&C shall devise and develop interfaces with other matching services that enable end-user clients or any service that represents end-user clients to SS&C ("end-user representative") to gain a single point of access to SS&C and other matching services. Such interfaces must link with each other matching service so that an end-user client of one matching service can communicate with all end-user clients of all matching services, regardless of which matching service completes trade matching prior to settlement.

(3) If any intellectual property proprietary to SS&C is necessary to develop, build, and operate links or interfaces to SS&C's matching service, as described in these conditions, SS&C shall license such intellectual property to other matching services seeking linkage to SS&C on fair and reasonable terms for use in such links or interfaces.

(4) SS&C shall not engage in any activity inconsistent with the purposes of Section 17A(a)(2) of the Exchange Act,²⁶² which section seeks the establishment of linked or coordinated facilities for clearance and settlement of transactions. In particular, SS&C will not engage in activities that would prevent any other matching service from operating a matching service that it has developed independently from SS&C's matching service.

(5) SS&C shall support industry standards in each of the following categories: communication protocols (e.g., TCP/IP, SNA); message and file transfer protocols and software (e.g., FIX, WebSphere MQ, SWIFT); message format standards (e.g., FIX); and message languages and metadata (e.g., XML). However, SS&C need not support all existing industry standards or those listed above by means of example. Within three months of regulatory approval, SS&C shall make publicly known those standards supported by SS&C's matching service. To the extent that SS&C decides to support other

²⁶⁰ The Commission is granting SS&C an exemption from clearing agency registration, so it will not be considered a self-regulatory organization under Section 3(a)(26) and therefore will not be required to file rule changes in accordance with Section 19(b) of the Exchange Act. The Commission is also not imposing a rule change filing requirement as a condition of the exemption.

²⁶¹ See Exchange Act Release Nos. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) ("ARP I"), and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) ("ARP II"); see also Memorandum from the Securities and Exchange Commission Division of Market Regulation to SROs and NASDAQ (June 1, 2001) ("Guidance for Systems Outages and System Change Notifications"), available at <http://www.sec.gov/divisions/marketregr/sro-guidance-for-systems-outage-06-01-2001.pdf>.

²⁶² 15 U.S.C. 78q-1(a)(2)(A)(ii).

industry standards, including new and modified standards, SS&C shall make these standards publicly known upon making such decision or within three months of updating its system to support such new standards, whichever is sooner. Any translation to/from these published standards necessary to communicate with SS&C's system shall be performed by SS&C without any significant delay or service degradation of the linked parties' services.

(6) SS&C shall make all reasonable efforts to link with each other matching service in a timely and efficient manner, as specified below. Upon written request, SS&C shall negotiate with each other matching service to develop and build an interface that allows the two to link matching services ("interface"). SS&C shall involve neutral industry participants in all negotiations to build or develop interfaces and, to the extent feasible, incorporate input from such participants in determining the specifications and architecture of such interfaces. Absent adequate business or technological justification,²⁶³ SS&C and the requesting other matching service shall conclude negotiations and reach a binding agreement to develop and build an interface within 120 calendar days of SS&C's receipt of the written request. This 120-day period may be extended upon the written agreement of both SS&C and the other matching service engaged in negotiations. For each other matching service with whom SS&C reaches a binding agreement to develop and build an interface, SS&C shall begin operating such interface within 90 days of reaching a binding agreement and receiving all the information necessary to develop and operate it. This 90-day period may be extended upon the written agreement of both SS&C and the other matching service. For each interface and within the same time SS&C must negotiate and begin operating each interface, SS&C and the other matching service shall agree to "commercial rules" for coordinating the provision of matching services through their respective interfaces, including commercial rules: (A) Allocating responsibility for performing matching services; and (B) allocating liability for service failures. SS&C shall also involve neutral industry participants in negotiating applicable commercial rules and, to the extent feasible, take input from such participants into account in agreeing to commercial rules. At a

minimum, each interface shall enable SS&C and the other matching service to transfer between them all trade and account information necessary to fulfill their respective matching responsibilities as set forth in their commercial rules ("trade and account information"). Absent an adequate business or technological justification, SS&C shall develop and operate each interface without imposing conditions that negatively impact the other matching service's ability to innovate its matching service or develop and offer other value-added services relating to its matching service or that negatively impact the other matching service's ability to compete effectively against SS&C.

(7) In order to facilitate fair and reasonable linkages between SS&C and other matching services, SS&C shall publish or make available to any other matching service the specifications for any interface and its corresponding commercial rules that are in operation within 20 days of receiving a request for such specifications and commercial rules. Such specifications shall contain all the information necessary to enable any other matching services not already linked to SS&C through an interface to establish a linkage with SS&C through an interface or a substantially similar interface. SS&C shall link to any other matching service, if the other matching service so opts, through an interface substantially similar to any interface and its corresponding commercial rules that SS&C is currently operating. SS&C shall begin operating such substantially similar interface and commercial rules with the other matching service within 90 days of receiving all the information necessary to operate that link. This 90-day period may be extended upon the written agreement of both SS&C and the other matching service that plans to use that link.

(8) SS&C and respective other matching services shall bear their own costs of building and maintaining an interface, unless otherwise negotiated by the parties.

(9) SS&C shall provide to all other matching services and end-user representatives that maintain linkages with SS&C sufficient advance notice of any material changes, updates, or revisions to its interfaces to allow all parties who link to SS&C through affected interfaces to modify their systems as necessary and avoid system downtime, interruption, or system degradation.

(10) SS&C and each other matching service shall negotiate fair and reasonable charges and terms of payment for the use of their interface

with respect to the sharing of trade and account information ("interface charges"). In any fee schedule adopted under conditions B.2.ii(10), B.2.ii(11), or B.2.ii(12) herein, SS&C's interface charges shall be equal to the interface charges of the respective other matching service.

(11) If SS&C and the other matching service cannot reach agreement on fair and reasonable interface charges within 60 days of receipt of the written request, SS&C and the other matching service shall submit to binding arbitration under the rules promulgated by the American Arbitration Association. The arbitration panel shall have 60 days to establish a fee schedule. The arbitration panel's establishment of a fee schedule shall be binding on SS&C and the other matching service unless and until the fee schedule is subsequently modified or abrogated by the Commission or SS&C and the other matching service mutually agree to renegotiate.

(12)(A) The following parameters shall be considered in determining fair and reasonable interface charges: (i) The variable cost incurred for forwarding trade and account information to other matching services; (ii) the average cost associated with the development of links to end-users and end-user representatives; and (iii) SS&C's interface charges to other matching services. (B) The following factors shall not be considered in determining fair and reasonable interface charges: (i) The respective cost incurred by SS&C or the other matching service in creating and maintaining interfaces; (ii) the value that SS&C or the other matching service contributes to the relationship; (iii) the opportunity cost associated with the loss of profits to SS&C that may result from competition from other matching services; (iv) the cost of building, maintaining, or upgrading SS&C's matching service; or (v) the cost of building, maintaining, or upgrading value added services to SS&C's matching service. (C) In any event, the interface charges shall not be set at a level that unreasonably deters entry or otherwise diminishes price or non-price competition with SS&C by other matching services.

(13) SS&C shall not charge its customers more for use of its matching service when one or more counterparties are customers of other matching services than SS&C charges its customers for use of its matching service when all counterparties are customers of SS&C. SS&C shall not charge customers any additional amount for forwarding to or receiving trade and account information from other matching

²⁶³ The failure of neutral industry participants to be available or to submit their input within the 120 day or 90 day time periods set forth in this paragraph shall not constitute an adequate business or technological justification for failing to adhere to the requirements set forth in this paragraph.

services called for under applicable commercial rules.

(14) SS&C shall maintain its quality, capacity, and service levels in the interfaces with other matching services (“matching services linkages”) without bias in performance relative to similar transactions processed completely within SS&C’s service. SS&C shall preserve and maintain all raw data and records necessary to prepare reports tabulating separately the processing and response times on a trade-by-trade basis for (A) completing its matching service when all counterparties are customers of SS&C; (B) completing its matching service when one or more counterparties are customers of other matching services; or (C) forwarding trade information to other matching services called for under applicable commercial rules. SS&C shall retain the data and records for a period not less than six years. Sufficient information shall be maintained to demonstrate that the requirements of condition B.2.ii(15) below are being met. SS&C and its service providers shall provide the Commission with reports regarding the time it takes SS&C to process trades and forward information under various circumstances within 30 days of the Commission’s request for such reports. However, SS&C shall not be responsible for identifying the specific cause of any delay in performing its matching service where the fault for such delay is not attributable to SS&C.

(15) SS&C shall process trades or facilitate the processing of trades by other matching services on a first-in-time priority basis. For example, if SS&C receives trade and account information that SS&C is required to forward to other matching services under applicable commercial rules (“pass-through information”) prior to receiving trade and account information from SS&C’s customers necessary to provide matching services for a trade in which all parties are customers of SS&C (“intra-hub information”), SS&C shall forward the pass-through information to the designated other matching service prior to processing the intra-hub information. If, on the other hand, the information were to come in the reverse order, SS&C shall process the intra-hub information before forwarding the pass-through information.

(16) SS&C shall sell access to its databases, systems or methodologies for transmitting settlement instructions (including settlement instructions from investment managers, broker-dealers, and custodian banks) and/or transmitting trade and account information to and receiving authorization responses from settlement

agents on fair and reasonable terms to other matching services and end-user representatives. Such access shall permit other matching services and end-user representatives to draw information from those databases, systems, and methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents for use in their own matching services or end-user representatives’ services. The links necessary for other matching services and end-user representatives to access SS&C’s databases, systems or methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents will comply with conditions B.2.ii(3), B.2.ii(5), B.2.ii(9), B.2.ii(14) and B.2.ii(15) above.

(17) For the first five years from the date of an exemptive order issued by the Commission with respect to SS&C’s matching service, SS&C shall provide the Commission with reports every six months sufficient to document SS&C’s adherence to the obligations relating to interfaces set forth in conditions B.2.ii(6) through B.2.ii(13) and B.2.ii(16) above. SS&C shall incorporate into such reports information including but not limited to (A) all other matching services linked to SS&C; (B) the time, effort, and cost required to establish each link between SS&C and other matching services; (C) any proposed links between SS&C and other matching services as well as the status of such proposed links; (D) any failure or inability to establish such proposed links or fee schedules for interface charges; (E) any written complaint received from other matching services relating to its established or proposed links with SS&C; and (F) if SS&C failed to adhere to any of the obligations relating to interfaces set forth in conditions B.2.ii(6) through B.2.ii(13) and B.2.ii(16) above, its explanation for such failure. The Commission shall treat information submitted in accordance with this condition as confidential, non-public information, subject to the provisions of applicable law. If any other matching service seeks to link with SS&C more than five years after issuance of an exemptive order issued by the Commission with respect to SS&C’s matching service, SS&C shall notify the Commission of the other matching service’s request to link with SS&C within ten days of receiving such request. In addition, SS&C shall provide reports to the Commission in

accordance with this paragraph commencing six months after the initial request for linkage is made until one year after SS&C and the other matching service begin operating their interface. The Commission reserves the right to request reports from SS&C at any time. SS&C shall provide the Commission with such updated reports within thirty days of the Commission’s request.

(18) SS&C shall also publish or make available upon request to any end-user representative the necessary specifications, protocols, and architecture of any interface created by SS&C for any end-user representative.

3. Modifications to Exemption

SS&C is required to file with the Commission amendments to its application for exemption on Form CA–1 if it makes any material change affecting its ETC or matching service—as summarized in this order, in its Form CA–1 dated April 15, 2013, or in any subsequently filed amendments to its Form CA–1—that would make such previously provided information incomplete or inaccurate.

In addition, the Commission may modify by order the terms, scope, or conditions of SS&C’s exemption from registration as a clearing agency if it determines that such modification is necessary or appropriate in the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Furthermore, the Commission may limit, suspend, or revoke this exemption if it finds that SS&C has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

V. Conclusion

The Commission believes that the BSTP and SS&C applications demonstrate that BSTP and SS&C will have sufficient operational and processing capabilities to facilitate prompt and accurate matching services and to support the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. The Commission also notes that BSTP and SS&C’s exemptions will be subject to conditions that are designed to enable the Commission to monitor BSTP and SS&C’s risk management procedures, operational capacity and safeguards, corporate structure, and ability to operate in a manner to further the fundamental goals of Section 17A of the Exchange Act. Therefore, for the reasons discussed

throughout this order, the Commission finds that the BSTP and SS&C applications are consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

IT IS HEREBY ORDERED, pursuant to Section 17A(b)(1) of the Exchange Act,

that the applications for exemption from registration as a clearing agency under Section 17A(b)(1) filed by Bloomberg STP LLC (File No. 600–33) and SS&C Technologies, Inc. (File No. 600–34) be, and hereby are, approved within the scope described in this order and

subject to the terms and conditions contained in this order.

By the Commission.

Robert W. Errett,

Deputy Secretary.

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December 3	Dec 18	Dec 24	Jan 4	Jan 7	Jan 19	Feb 1	Mar 2
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December 18	Jan 4	Jan 8	Jan 19	Jan 22	Feb 1	Feb 16	Mar 17
December 21	Jan 5	Jan 11	Jan 20	Jan 25	Feb 4	Feb 19	Mar 21
December 22	Jan 6	Jan 12	Jan 21	Jan 26	Feb 5	Feb 22	Mar 21
December 23	Jan 7	Jan 13	Jan 22	Jan 27	Feb 8	Feb 22	Mar 22
December 24	Jan 8	Jan 14	Jan 25	Jan 28	Feb 8	Feb 22	Mar 23
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